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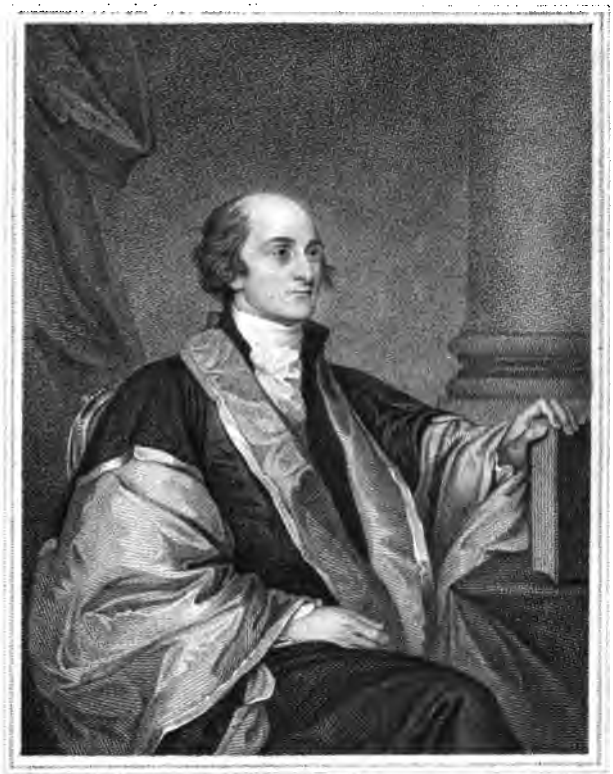

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JOHN JAY

THE

WORKS

OF

ALEXANDER HAMILTON;

COMPRISING HIS MOST IMPORTANT

OFFICIAL REPORTS;

AN IMPROVED EDITION OF

THE FEDERALIST,

ON THE NEW CONSTITUTION, WRITTEN IN 1788;

AND

PACIFICUS,

ON THE PROCLAMATION OF NEUTRALITY,

WRITTEN IN 1793.

IN THREE VOLUMES.

VOL. II.

NEW-YORK:

PUBLISHED BY WILLIAMS & WHITING,

AT THEIR THEOLOGICAL AND CLASSICAL BOOK-STORE,

No. 118, *Pearl-street.*

Printed by J. Seymour.

1810.

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May 1913

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NEW YORK

THE

FEDERALIST,

ON THE NEW CONSTITUTION;

WRITTEN IN 1788,

BY MR. HAMILTON, MR. JAY, AND MR. MADISON.

TO WHICH IS ADDED

PACIFICUS,

ON THE PROCLAMATION OF NEUTRALITY;

WRITTEN IN 1793,

BY MR. HAMILTON.

A NEW EDITION, WITH THE NAMES AND PORTRAITS OF THE SEVERAL WRITERS.

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CHARLES CLINTON,
Clerk of the District of New-York.

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THE FEDERALIST.

NUMBER I.

BY MR. HAMILTON.

INTRODUCTION.

AFTER full experience of the insufficiency of the existing Federal Government, you are invited to deliberate upon a new Constitution for the United States of America.

The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION—the safety and welfare of the parts of which it is composed—the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country, to decide by their conduct and example, the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are for ever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis at which we are arrived may, with propriety, be regarded as the period when that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.

This idea, by adding the inducements of philanthropy to those of patriotism, will heighten the solicitude, which all considerate and good men must

feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, uninfluenced by considerations foreign to the public good. But this is more ardently to be wished for, than seriously to be expected. The plan offered to our deliberations, affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects extraneous to its merits; and of views, passions, and prejudices, little favourable to the discovery of truth.

Among the most formidable of the obstacles, which the new constitution will have to encounter, may readily be distinguished the obvious interest of a certain class of men in every state, to resist all changes which may hazard a diminution of the power, emolument, and consequence, of the offices they hold under the state establishments: and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies, than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men into interested or ambitious views, merely because their situations might subject them to suspicion. Candour will oblige us to admit, that even such men may be actuated by upright intentions; and it cannot be doubted, that much of the opposition which has already shown itself, or that may hereafter make its appearance, will spring from sources, blameless at least, if not respectable—the honest errors of

minds led astray by preconceived jealousies and fears. So numerous indeed, and so powerful are the causes, which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions, of the first magnitude to society. This circumstance, if duly attended to, would always furnish a lesson of moderation to those who are engaged in any controversy, however well persuaded of being in the right. And a further reason for caution, in this respect, might be drawn from the reflection, that we are not always sure, that those who advocate the truth are actuated by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives, not more laudable than these, are apt to operate as well upon those who support, as upon those who oppose, the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit, which has, at all times, characterized political parties. For, in politics as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, just as these sentiments must appear to candid men, we have already sufficient indications, that it will happen in this, as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts, by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and effi-

ciency of government, will be stigmatized as the offspring of a temper fond of power, and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretence and artifice; the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigour of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism than the latter; and that of those men who have overturned the liberties of republics, the greatest number have begun their career, by paying an obsequious court to the people; commencing demagogues, and ending tyrants.

In the course of the preceding observations, it has been my aim, fellow-citizens, to put you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they

proceed from a source not unfriendly to the new constitution. Yes, my countrymen, I own to you, that, after having given it an attentive consideration, I am clearly of opinion, it is your interest to adopt it. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves, which I do not feel. I will not amuse you with an appearance of deliberation, when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast: my arguments will be open to all, and may be judged of by all. They shall, at least, be offered in a spirit which shall not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars....*The utility of the UNION to your political prosperity...The insufficiency of the present Confederation to preserve that Union... The necessity of a government, at least equally energetic with the one proposed, to the attainment of this object...The conformity of the proposed Constitution to the true principles of republican government...Its analogy to your own State Constitution*...and lastly, *The additional security, which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

In the progress of this discussion, I shall endeavour to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION; a point,

no doubt, deeply engraved on the hearts of the great body of the people in every state, and one which, it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new constitution, that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole*. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance its open avowal. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the constitution, or a dismemberment of the Union. It may therefore be essential to examine particularly the advantages of that union, the certain evils, and the probable dangers, to which every state will be exposed from its dissolution. This shall accordingly be done.

PUBLIUS.

NUMBER II.

BY MR. JAY.

Concerning Dangers from foreign Force and Influence.

WHEN the people of America reflect, that the question now submitted to their determination, is one of the most important that has engaged, or can

* The same idea, tracing the arguments to their consequences, is held out in several of the late publications against the new Constitution.

well engage, their attention, the propriety of their taking a very comprehensive, as well as a very serious view of it, must be evident.

Nothing is more certain than the indispensable necessity of government; and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers. It is well worthy of consideration, therefore, whether it would conduce more to the interest of the people of America, that they should, to all general purposes, be one nation, under one federal government, than that they should divide themselves into separate confederacies, and give to the head of each, the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion, that the prosperity of the people of America depended on their continuing firmly united; and the wishes, prayers, and efforts, of our best and wisest citizens, have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that, instead of looking for safety and happiness in union, we ought to seek it in a division of the states into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it nevertheless has its advocates; and certain characters who were formerly much opposed to it, are at present of the number. Whatever may be the arguments or inducements, which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new political tenets, without being fully convinced that they are founded in truth and sound policy.

It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but that one connected, fertile, wide-spreading country, was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.

With equal pleasure I have as often taken notice, that Providence has been pleased to give this one connected country to one united people; a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs; and who, by their joint counsels, arms, and efforts, fighting side by side, throughout a long and bloody war, have nobly established their general liberty and independence.

This country and this people seem to have been made for each other; and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties.

Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes, we have uniformly been one people. Each individual citizen every where enjoying the same national rights, privileges, and protection.

As a nation, we have made peace and war: as a nation, we have vanquished our common enemies: as a nation, we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states.

A strong sense of the value and blessings of Union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time, when their habitations were in flames, when many of them were bleeding in the field; and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections, which must ever precede the formation of a wise and well balanced government for a free people. It is not to be wondered at that a government, instituted in times so inauspicious, should on experiment be found greatly deficient, and inadequate to the purpose it was intended to answer.

This intelligent people perceived and regretted these defects. Still continuing no less attached to union, than enamoured of liberty, they observed the danger, which immediately threatened the former and more remotely the latter; and being persuaded that ample security for both, could only be found in a national government more wisely framed, they, as with one voice, convened the late Convention at Philadelphia, to take that important subject under consideration.

This Convention, composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue, and wisdom, in times which tried the souls of men, undertook the arduous task. In the mild sea-

son of peace, with minds unoccupied by other subjects, they passed many months in cool uninterrupted and daily consultations: And finally, without having been awed by power, or influenced by any passion, except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous counsels.

Admit, for so is the fact, that this plan is only *recommended*, not imposed; yet, let it be remembered, that it is neither recommended to *blind* approbation, nor to *blind* reprobation; but to that sedate and candid consideration, which the magnitude and importance of the subject demand, and which it certainly ought to receive. But, as has been already remarked, it is more to be wished than expected that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten, that well grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of 1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government who obeyed the dictates of personal interest, but others, from a mistaken estimate of consequences, from the undue influence of ancient attachments, or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their endeavours to persuade the people to reject the advice of that patriotic Congress. Many indeed were deceived and deluded, but the great majority reasoned and decided judiciously; and happy they are in reflecting that they did so.

They considered that the Congress was composed of many wise and experienced men. That being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination than their duty, to recommend such measures only, as after the most mature deliberation they really thought prudent and advisable.

These and similar considerations then induced the people to rely greatly on the judgment and integrity of the Congress; and they took their advice, notwithstanding the various arts and endeavours used to deter and dissuade them from it. But if the people at large had reason to confide in the men of that Congress, few of whom had then been fully tried or generally known, still greater reason have they now to respect the judgment and advice of the Convention; for it is well known, that some of the most distinguished members of that Congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this Convention, and carried into it their accumulated knowledge and experience.

It is worthy of remark, that not only the first, but every succeeding Congress, as well as the late Convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it, was the great object of the people in forming that Convention;

and it is also the great object of the plan which the Convention has advised them to adopt. With what propriety, therefore, or for what good purposes, are attempts at this particular period made, by some men, to depreciate the importance of the Union? or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind, that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the Union, rests on great and weighty reasons.

They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the Convention, seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy: that certainly would be the case; and I sincerely wish that it may be as clearly foreseen by every good citizen, that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the Poet, "FAREWELL! A LONG FAREWELL, TO ALL MY GREATNESS!"

PUBLIUS.

NUMBER III.

BY MR. JAY.

The same Subject continued.

IT is not a new observation, that the people of any country, (if like the Americans, intelligent and well informed,) seldom adopt, and steadily persevere for

many years, in any erroneous opinion respecting their interests. That consideration naturally tends to create great respect for the high opinion which the people of America have so long and uniformly entertained of the importance of their continuing firmly united under one federal government, vested with sufficient powers for all general and national purposes.

The more attentively I consider and investigate the reasons which appear to have given birth to this opinion, the more I become convinced that they are cogent and conclusive.

Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their *safety* seems to be the first. The *safety* of the people doubtless has relation to a great variety of circumstances and considerations, and consequently affords great latitude to those who wish to define it precisely and comprehensively.

At present I mean only to consider it as it respects security for the preservation of peace and tranquillity, as well against dangers from *foreign arms and influence*, as against dangers arising from domestic causes. As the former of these comes first in order, it is proper it should be first discussed. Let us therefore proceed to examine whether the people are not right in their opinion, that a cordial Union under an efficient national Government, affords them the best security that can be devised against *hostilities* from abroad.

The number of wars which have happened, or may happen in the world, will always be found to be in proportion to the number and weight of the causes, whether *real* or *pretended*, which *provoke* or *invite*

them. If this remark be just, it becomes useful to inquire, whether so many *just* causes of war are likely to be given by *united* America, as by *disunited* America; for if it should turn out that united America will probably give the fewest, then it will follow, that in this respect, the Union tends most to preserve the people in a state of peace with other nations.

The *just* causes of war, for the most part, arise either from violations of treaties, or from direct violence. America has already formed treaties with no less than six foreign nations, and all of them, except Prussia, are maritime, and therefore able to annoy and injure us: She has also extensive commerce with Portugal, Spain, and Britain; and with respect to the two latter, has the additional circumstance of neighbourhood to attend to.

It is of high importance to the peace of America, that she observe the law of nations towards all these powers; and to me it appears evident, that this will be more perfectly and punctually done by one national government, than it could be either by thirteen separate states, or by three or four distinct confederacies. For this opinion various reasons may be assigned.

When once an efficient national government is established, the best men in the country will not only consent to serve, but will also generally be appointed to manage it; for although town, or county, or other contracted influence, may place men in state assemblies, or senates, or courts of justice, or executive departments; yet more general and extensive reputation for talents and other qualifications, will be necessary to recommend men to offices under the national government, especially as it will have the widest field for choice, and never experience that want of proper persons, which is not uncommon in

some of the states. Hence it will result, that the administration, the political councils, and the judicial decisions of the national government, will be more wise, systematical, and judicious, than those of individual states, and consequently more satisfactory with respect to the other nations, as well as more *safe* with respect to ourselves.

Under the national government, treaties and articles of treaties, as well as the law of nations, will always be expounded in one sense, and executed in the same manner: whereas adjudications on the same points and questions, in thirteen states, or in three or four confederacies, will not always accord, or be consistent; and that as well from the variety of independent courts and judges, appointed by different and independent governments, as from the different local laws and interests which may affect and influence them. The wisdom of the Convention in committing such questions to the jurisdiction and judgment of courts appointed by, and responsible only to one national government, cannot be too much commended.

The prospect of present loss or advantage, may often tempt the governing party in one or two states to swerve from good faith and justice; but those temptations not reaching the other states, and consequently having little or no influence on the national government, the temptations will be fruitless, and good faith and justice be preserved. The case of the treaty of peace with Britain, adds great weight to this reasoning.

If even the governing party in a state should be disposed to resist such temptations, yet as such temptations may, and commonly do, result from circumstances peculiar to the state, and may affect a

great number of the inhabitants, the governing party may not always be able, if willing, to prevent the injustice meditated, or to punish the aggressors. But the national government, not being affected by those local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent, or punish its commission by others.

So far, therefore, as either designed or accidental violations of treaties and of the laws of nations afford *just* causes of war, they are less to be apprehended under one general government, than under several lesser ones; and in that respect, the former most favours the *safety* of the people.

As to those just causes of war which proceed from direct and unlawful violence, it appears equally clear to me, that one good national government affords vastly more security against dangers of that sort, than can be derived from any other quarter.

Such violences are more frequently occasioned by the passions and interests of a part, than of the whole; of one or two states, than of the union. Not a single Indian war has yet been produced by aggressions of the present federal government, feeble as it is; but there are several instances of Indian hostilities having been provoked by the improper conduct of individual states, who, either unable or unwilling to restrain or punish offences, have given occasion to the slaughter of many innocent inhabitants.

The neighbourhood of Spanish and British territories, bordering on some states, and not on others, naturally confines the causes of quarrel more immediately to the borderers. The bordering states, if any, will be those who, under the impulse of sud-

den irritations, and a quick sense of apparent interest or injury, will be most likely by direct violence, to excite war with those nations; and nothing can so effectually obviate that danger, as a national government, whose wisdom and prudence will not be diminished by the passions which actuate the parties immediately interested.

But not only fewer just causes of war will be given by the national government, but it will also be more in their power to accommodate and settle them amicably. They will be more temperate and cool, and in that respect, as well as in others, will be more in a capacity to act with circumspection, than the offending state. The pride of states, as well as of men, naturally disposes them to justify all their actions, and opposes their acknowledging, correcting, or repairing their errors and offences. The national government in such cases will not be affected by this pride; but will proceed with moderation and candour to consider and decide on the means most proper to extricate them from the difficulties which threaten them.

Besides, it is well known, that acknowledgments, explanations, and compensations, are often accepted as satisfactory from a strong united nation, which would be rejected as unsatisfactory, if offered by a state or confederacy of little consideration or power.

In the year 1685, the state of Genoa having offended Louis XIVth, endeavoured to appease him. He demanded that they should send their *Doge* or chief magistrate, accompanied by four of their Senators, to *France*, to ask his pardon, and receive his terms. They were obliged to submit to it, for the sake of peace. Would he on any occasion either have demanded or have received the like humilia-

tion from Spain, or Britain, or any other powerful nation?

PUBLIUS.

NUMBER IV.

BY MR. JAY.

The same Subject continued.

MY last paper assigned several reasons why the safety of the people would be best secured by Union against the danger it may be exposed to by *just* causes of war given to other nations; and those reasons show that such causes would not only be more rarely given, but would also be more easily accommodated by a national government, than either by the state governments, or the proposed confederacies.

But the safety of the people of America against dangers from foreign force, depends not only on their forbearing to give just causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to invite hostility or insult; for it need not be observed, that there are pretended as well as just causes of war.

It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting any thing by it; nay, that absolute monarchs will often make war when their nations are to get nothing by it; but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize

or support their particular families, or partizans. These, and a variety of motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctioned by justice, or the voice and interests of his people. But, independent of these inducements to war, which are most prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings; and some of them will, on examination, be found to grow out of our relative situation and circumstances.

With France and with Britain we are rivals in the fisheries, and can supply their markets cheaper than they can themselves, notwithstanding any efforts to prevent it by bounties on their own, or duties on foreign fish.

With them, and with most other European nations, we are rivals in navigation, and the carrying trade: and we shall deceive ourselves if we suppose that any of them will rejoice to see these flourish in our hands; for as our carrying trade cannot increase, without in some degree diminishing theirs, it is more their interest, and will be more their policy, to restrain than to promote it.

In the trade to China and India, we interfere with more than one nation, inasmuch as it enables us to partake in advantages which they had in a manner monopolized, and as we thereby supply ourselves with commodities which we used to purchase from them.

The extension of our own commerce in our own vessels, cannot give pleasure to any nations who possess territories on or near this continent, because the cheapness and excellence of our productions, added to the circumstance of vicinity, and the enter-

prise and address of our merchants and navigators, will give us a greater share in the advantages which those territories afford, than consists with the wishes or policy of their respective sovereigns.

Spain thinks it convenient to shut the Missisippi against us on the one side, and Britain excludes us from the St. Lawrence on the other; nor will either of them permit the other waters, which are between them and us, to become the means of mutual intercourse and traffic.

From these, and like considerations, which might, if consistent with prudence, be more amplified and detailed, it is easy to see that jealousies and uneasinesses may gradually slide into the minds and cabinets of other nations; and that we are not to expect they should regard our advancement in union, in power and consequence, by land and by sea, with an eye of indifference and composure.

The people of America are aware that inducements to war may arise out of these circumstances, as well as from others not so obvious at present; and that whenever such inducements may find fit time and opportunity for operation, pretences to colour and justify them will not be wanting. Wisely therefore do they consider union and a good national government, as necessary to put and keep them in such a situation, as, instead of inviting war, will tend to repress and discourage it. That situation consists in the best possible state of defence, and necessarily depends on the government, the arms, and the resources of the country.

As the safety of the whole is the interest of the whole, and cannot be provided for without government, either one or more, or many, let us inquire whether one good government is not, relative to the

object in question, more competent than any other given number whatever.

One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defence of any particular part, and that more easily and expeditiously than state governments, or separate confederacies, can possibly do, for want of concert and unity of system. It can place the militia under one plan of discipline, and by putting their officers in a proper line of subordination to the chief magistrate, will in a manner consolidate them into one corps, and thereby render them more efficient than if divided into thirteen, or into three or four distinct independent bodies.

What would the militia of Britain be, if the English militia obeyed the government of England, if the Scotch militia obeyed the government of Scotland, and if the Welch militia obeyed the government of Wales? Suppose an invasion: would those three governments, (if they agreed at all,) be able, with all their respective forces, to operate against the enemy so effectually as the single government of Great-Britain would?

We have heard much of the fleets of Britain; and if we are wise, the time may come, when the fleets of America may engage attention. But if one national government had not so regulated the naviga-

tion of Britain as to make it a nursery for seamen—if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated. Let England have its navigation and fleet; let Scotland have its navigation and fleet; let Wales have its navigation and fleet; let Ireland have its navigation and fleet; let those four of the constituent parts of the British empire be under four independent governments, and it is easy to perceive how soon they would each dwindle into comparative insignificance.

Apply these facts to our own case. Leave America divided into thirteen, or, if you please, into three or four independent governments, what armies could they raise and pay, what fleets could they ever hope to have? If one was attacked, would the others fly to its succour, and spend their blood and money in its defence? Would there be no danger of their being flattered into neutrality by specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbours, of whom perhaps they have been jealous, and whose importance they are content to see diminished? Although such conduct would not be wise, it would nevertheless be natural. The history of the states of Greece, and of other countries, abound with such instances; and it is not improbable that what has so often happened, would, under similar circumstances, happen again.

But admit that they might be willing to help the invaded state or confederacy. How, and when, and in what proportion, shall aids of men and money be afforded? Who shall command the allied armies, and from which of the associates shall he receive his

orders? Who shall settle the terms of peace? And in case of disputes, what umpire shall decide between them, and compel acquiescence? Various difficulties and inconveniences would be inseparable from such a situation; whereas, one government, watching over the general and common interests, combining and directing the powers and resources of the whole, would be free from all these embarrassments, and conduce far more to the safety of the people.

But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is, that foreign nations will know and view it exactly as it is; and they will act towards us accordingly. If they see that our national government is efficient and well administered—our trade prudently regulated—our militia properly organized and disciplined—our resources and finances discreetly managed—our credit re-established—our people free, contented, and united; they will be much more disposed to cultivate our friendship than to provoke our resentment. If, on the other hand, they find us either destitute of an effectual government, (each state doing right or wrong, as to its rulers may seem convenient,) or split into three or four independent, and probably discordant republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor pitiful figure will America make in their eyes! How liable would she become, not only to their contempt, but to their outrage; and how soon would dear bought experience proclaim, that when a people or family so divide, it never fails to be against themselves.

PUBLIUS.

NUMBER V.

BY MR. JAY.

The same Subject continued.

QUEEN Ann, in her letter of the 1st July, 1706, to the Scotch Parliament, makes some observations on the importance of the *Union* then forming between England and Scotland, which merit our attention.

I shall present the public with one or two extracts from it. "An entire and perfect union will be the "solid foundation of lasting peace: it will secure "your religion, liberty, and property; remove the "animosities amongst yourselves, and the jealousies "and differences betwixt our two kingdoms. It must "increase your strength, riches, and trade; and by "this union the whole island, being joined in affec-"tion, and free from all apprehensions of different "interests, will be *enabled to resist all its enemies.*" "We most earnestly recommend to you calmness and "unanimity in this great and weighty affair, that "the union may be brought to a happy conclusion, "being the only *effectual* way to secure our present "and future happiness; and disappoint the designs "of our and your enemies, who will, doubtless, on "this occasion, *use their utmost endeavours to prevent* "*or delay this union.*"

It was remarked in the preceding paper, that weakness and divisions at home, would invite dangers from abroad; and that nothing would tend more to secure us from them than union, strength, and good

government within ourselves. This subject is copious, and cannot easily be exhausted.

The history of Great-Britain is the one with which we are in general the best acquainted, and it gives us many useful lessons. We may profit by their experience, without paying the price which it cost them. Although it seems obvious to common sense, that the people of such an island should be but one nation, yet we find that they were for ages divided into three; and that those three were almost constantly embroiled in quarrels and wars with one another. Notwithstanding their true interest, with respect to the continental nations, was really the same, yet by the arts, and policy, and practices of those nations, their mutual jealousies were perpetually kept inflamed, and for a long series of years they were far more inconvenient and troublesome, than they were useful and assisting to each other.

Should the people of America divide themselves into three or four nations, would not the same thing happen? Would not similar jealousies arise, and be in like manner cherished? Instead of their being "joined in affection, and free from all apprehension "of different interests," envy and jealousy would soon extinguish confidence and affection, and the partial interests of each confederacy, instead of the general interests of all America, would be the only objects of their policy and pursuits. Hence, like most other *bordering* nations, they would always be either involved in disputes and war, or live in the constant apprehension of them.

The most sanguine advocates for three or four confederacies, cannot reasonably suppose that they would long remain exactly on an equal footing in point of strength, even if it was possible to form

them so at first: but admitting that to be practicable, yet what human contrivance can secure the continuance of such equality? Independent of those local circumstances which tend to beget and increase power in one part, and to impede its progress in another, we must advert to the effects of that superior policy and good management which would probably distinguish the government of one above the rest, and by which their relative equality in strength and consideration woud be destroyed. For it cannot be presumed, that the same degree of sound policy, prudence, and foresight, would uniformly be observed by each of these confederacies, for a long succession of years.

Whenever, and from whatever causes it might happen, and happen it would, that any one of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbours, that moment would those neighbours behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance, or even to secure her prosperity.—Much time would not be necessary to enable her to discern these unfriendly dispositions. She would soon begin, not only to lose confidence in her neighbours, but also to feel a disposition equally unfavourable to them. Distrust naturally creates distrust; and by nothing is good will and kind conduct more speedily changed, than by invidious jealousies, and uncandid imputations, whether expressed or implied.

The North is generally the region of strength, and many local circumstances render it probable,

that the most northern of the proposed confederacies would, at a period not very far distant, be unquestionably more formidable than any of the others. No sooner would this become evident, than the *Northern Hive* would excite the same ideas and sensations in the more Southern parts of America, which it formerly did in the Southern parts of Europe: nor does it appear to be a rash conjecture, that its young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbours.

They who well consider the history of similar divisions and confederacies, will find abundant reasons to apprehend, that those in contemplation would in no other sense be neighbours, than as they would be borderers; that they would neither love nor trust one another; but, on the contrary, would be a prey to discord, jealousy, and mutual injuries; in short, that they would place us exactly in the situation in which some nations doubtless wish to see us—in which we should be *formidable only to each other.*

From these considerations, it appears that those persons are greatly mistaken, who suppose that alliances offensive and defensive might be formed between these confederacies, which would produce that combination and union of wills, of arms, and of resources, which would be necessary to put and keep them in a formidable state of defence against foreign enemies.

When did the independent states into which Britain and Spain were formerly divided, combine in such alliances, or unite their forces against a foreign enemy? The proposed confederacies will be *distinct nations.* Each of them would have to regulate its commerce with foreigners by distinct treaties; and

as their productions and commodities are different, and proper for different markets, so would those treaties be essentially different. Different commercial concerns must create different interests, and of course different degrees of political attachment to, and connexion with, different foreign nations. Hence it might, and probably would happen, that the foreign nation with whom the *Southern* confederacy might be at war, would be the one, with whom the *Northern* confederacy would be the most desirous of preserving peace and friendship. An alliance so contrary to their immediate interest would not, therefore, be easy to form, nor if formed, would it be observed and fulfilled with perfect good faith.

Nay, it is far more probable that in America, as in Europe, neighbouring nations, acting under the impulse of opposite interests, and unfriendly passions, would frequently be found taking different sides. Considering our distance from Europe, it would be more natural for these confederacies to apprehend danger from one another, than from distant nations, and therefore that each of them should be more desirous to guard against the others, by the aid of foreign alliances, than to guard against foreign dangers by alliances between themselves. And here let us not forget how much more easy it is to receive foreign fleets into our ports, and foreign armies into our country, than it is to persuade or compel them to depart. How many conquests did the Romans and others make in the character of allies, and what innovations did they under the same character introduce into the governments of those whom they pretended to protect!

Let candid men judge, then, whether the division of America into any given number of independent

sovereignties, would tend to secure us against the hostilities and improper interference of foreign nations.

PUBLIUS.

NUMBER VI.

BY MR. HAMILTON.

Concerning Dangers from War between the States.

THE three last numbers of this work have been dedicated to an enumeration of the dangers to which we should be exposed, in a state of disunion, from the arms and arts of foreign nations. I shall now proceed to delineate dangers of a different, and, perhaps, still more alarming kind; those which will in all probability flow from dissentions between the states themselves, and from domestic factions and convulsions. These have been already in some instances slightly anticipated; but they deserve a more particular and more full investigation.

If these states should either be wholly disunited, or only united in partial confederacies, a man must be far gone in Utopian speculations, who can seriously doubt that the subdivisions into which they might be thrown, would have frequent and violent contests with each other. To presume a want of motives for such contests, as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent unconnected sovereignties, situated in the

same neighbourhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power, or the desire of pre-eminence and dominion—the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed, though an equally operative influence, within their spheres: such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears, of leading individuals in the communities of which they are members. Men of this class, whether the favourites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage, or personal gratification.

The celebrated Pericles, in compliance with the resentments of a prostitute*, at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the *Samnians*. The same man, stimulated by private pique against the *Magarensians*, another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice in a supposed theft of the statuary *Phidias*, or to get rid of the accusations prepared to be brought against him for dissipating the

* Aspasia, vide Plutarch's Life of Pericles.

funds of the state in the purchase of popularity, or from a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the *Pelopponesian* war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian commonwealth.

The ambitious cardinal, who was prime minister to Henry VIIIth, permitting his vanity to aspire to the triple-crown, entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the emperor Charles Vth. To secure the favour and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in general. For if there ever was a sovereign who bid fair to realize the project of universal monarchy, it was the emperor Charles Vth, of whose intrigues Wolsey was at once the instrument and the dupe.

The influence which the bigotry of one female*, the petulances of another†, and the cabals of a third‡, had in the cotemporary policy, ferments, and pacification, of a considerable part of Europe, are topics that have been too often descanted upon not to be generally known.

To multiply examples of the agency of personal considerations in the production of great national events, either foreign or domestic, according to their direction, would be an unnecessary waste of time.

* Madame de Maintenon. † Duchess of Marlborough
‡ Madame de Pompadoure.

Those who have but a superficial acquaintance with the sources from which they are to be drawn, will themselves recollect a variety of instances; and those who have a tolerable knowledge of human nature, will not stand in need of such lights, to form their opinion either of the reality or extent of that agency. Perhaps, however, a reference, tending to illustrate the general principle, may with propriety be made to a case which has lately happened among ourselves. If SHAYS had not been a *desperate debtor*, it is much to be doubted whether Massachusetts would have been plunged into a civil war.

But, notwithstanding the concurring testimony of experience in this particular, there are still to be found visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the states, though dismembered and alienated from each other. The genius of republics, say they, is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humours which have so often kindled into wars. Commercial republics, like ours, will never be disposed to waste themselvs in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

We may ask these projectors in politics, whether it is not the true interest of all nations to cultivate the same benevolent and philosophic spirit? If this be their true interest, have they in fact pursued it? Has it not, on the contrary, invariably been found, that momentary passions, and immediate interests, have a more active and imperious control over human conduct, than general or remote considerations of policy, utility, or justice? Have republics in prac-

tice been less addicted to war than monarchies? Are not the former administered by men as well as the latter? Are there not aversions, predilections, rivalships, and desires of unjust acquisition, that affect nations, as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known, that their determinations are often governed by a few individuals in whom they place confidence, and that they are of course liable to be tinctured by the passions and views of those individuals? Has commerce hitherto done any thing more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives, since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite both for the one and for the other?—Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries.

Sparta, Athens, Rome, and Carthage, were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as the neighbouring monarchies of the same times. Sparta was little better than a well regulated camp; and Rome was never sated of carnage and conquest.

Carthage, though a commercial republic, was the aggressor in the very war that ended in her destruction. Hannibal had carried her arms into the heart of Italy, and even to the gates of Rome, before Scipio,

in turn, gave him an overthrow in the territories of Carthage, and made a conquest of the commonwealth.

Venice, in latter times, figured more than once in wars of ambition; till becoming an object of terror to the other Italian states, Pope Julius the Second, found means to accomplish that formidable league*, which gave a deadly blow to the power and pride of that haughty republic.

The provinces of Holland, till they were overwhelmed in debts and taxes, took a leading and conspicuous part in the wars of Europe. They had furious contests with England for the dominion of the sea; and were among the most persevering and most implacable opponents of Lewis XIV.

In the government of Britain the representatives of the people compose one branch of the national legislature. Commerce has been for ages the predominant pursuit of that country. Yet few nations have been more frequently engaged in war; and the wars in which that kingdom has been engaged, have, in numerous instances, proceeded from the people. There have been, if I may so express it, almost as many popular, as royal wars. The cries of the nation and the importunities of their representatives, have, upon various occasions, dragged their monarchs into war, or continued them in it contrary to their inclinations, and sometimes contrary to the real interests of the state. In that memorable struggle for superiority between the rival houses of *Austria* and *Bourbon*, which so long kept Europe in a flame, it is well known that the antipathies of the English

* THE LEAGUE OF CAMBRAY, comprehending the Emperor, the King of France, the King of Arragon, and most of the Italian Princes and States.

against the French, seconding the ambition, or rather the avarice of a favourite leader*, protracted the war beyond the limits marked out by sound policy, and for a considerable time in opposition to the views of the court.

The wars of these two last mentioned nations have in a great measure grown out of commercial considerations. The desire of supplanting, and the fear of being supplanted, either in particular branches of traffic, or in the general advantages of trade and navigation; and sometimes even the more culpable desire of sharing in the commerce of other nations, without their consent.

The last war but two between Britain and Spain, sprang from the attempts of the English merchants, to prosecute an illicit trade with the Spanish main. These unjustifiable practices on their part, produced severities on the part of the Spaniards, towards the subjects of Great-Britain, which were not more justifiable; because they exceeded the bounds of a just retaliation, and were chargeable with inhumanity and cruelty. Many of the English who were taken on the Spanish coasts, were sent to dig in the mines of Potosi; and by the usual progress of a spirit of resentment, the innocent were after a while confounded with the guilty in indiscriminate punishment. The complaints of the merchants kindled a violent flame throughout the nation, which soon after broke out in the house of commons, and was communicated from that body to the ministry. Letters of reprisal were granted, and a war ensued; which, in its consequences, overthrew all the alliances that but twenty years before had been formed, with sanguine expectations of the most beneficial fruits.

* The Duke of Marlborough.

From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries, which would seduce us into the expectation of peace and cordiality between the members of the present confederacy, in a state of separation? Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct, that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?

Let the point of extreme depression to which our national dignity and credit have sunk; let the inconveniences felt every where from a lax and ill administration of government; let the revolt of a part of the state of North-Carolina; the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare!

So far is the general sense of mankind from corresponding with the tenets of those, who endeavour to lull asleep our apprehensions of discord and hostility between the States, in the event of disunion, that it has, from long observation of the progress of society, become a sort of axiom in politics, that vicinity or nearness of situation, constitutes nations natural enemies. An intelligent writer expresses himself on this subject to this effect: "NEIGHBOURING "NATIONS, (says he,) are naturally ENEMIES of each "other, unless their common weakness forces them

« to league in a CONFEDERATE REPUBLIC, and their « constitution prevents the differences that neigh- « bourhood occasions, extinguishing that secret jeal- « ousy, which disposes all states to aggrandize them- « selves at the expense of their neighbours*." This passage, at the same time, points out the EVIL and suggests the REMEDY.

PUBLIUS.

NUMBER VII.

BY MR. HAMILTON.

The Subject continued, and particular Causes enumerated.

IT is sometimes asked, with an air of seeming triumph, what inducements the states could have, if disunited, to make war upon each other? It would be a full answer to this question to say,—precisely the same inducements which have, at different times, deluged in blood all the nations in the world. But unfortunately for us, the question admits of a more particular answer. There are causes of difference within our immediate contemplation, of the tendency of which, even under the restraints of a federal constitution, we have had sufficient experience to enable us to form a judgment of what might be expected, if those restraints were removed.

Territorial disputes have, at all times, been found one of the most fertile sources of hostility among nations. Perhaps the greatest proportion of the

* Vide Principes des Negotiations par l'Abbe de Mably.

wars that have desolated the earth have sprung from this origin. This cause would exist, among us, in full force. We have a vast tract of unsettled territory within the boundaries of the United States. There still are discordant and undecided claims between several of them; and the dissolution of the union would lay a foundation for similar claims between them all. It is well known, that they have heretofore had serious and animated discussions concerning the right to the lands which were ungranted at the time of the revolution, and which usually went under the name of crown-lands. The states within the limits of whose colonial governments they were comprised, have claimed them as their property; the others have contended that the rights of the crown, in this article, devolved upon the union; especially as to all that part of the Western territory which, either by actual possession or through the submission of the Indian proprietors, was subject to the jurisdiction of the King of Great-Britain, till it was relinquished by the treaty of peace. This, it has been said, was, at all events, an acquisition to the confederacy by compact with a foreign power. It has been the prudent policy of Congress to appease this controversy, by prevailing upon the states to make cessions to the United States for the benefit of the whole. This has been so far accomplished, as, under a continuation of the union, to afford a decided prospect of an amicable termination of the dispute. A dismemberment of the confederacy, however, would revive this dispute, and would create others on the same subject. At present, a large part of the vacant Western territory is by cession at least, if not by any anterior right, the common property of the union. If that were at an

end, the states which have made cessions, on a principle of federal compromise, would be apt, when the motive of the grant had ceased, to reclaim the lands as a reversion. The other states would no doubt insist on a proportion, by right of representation. Their argument would be, that a grant once made, could not be revoked; and that the justice of their participating in territory acquired or secured, by the joint efforts of the confederacy, remained undiminished. If, contrary to probability, it should be admitted by all the states, that each had a right to a share of this common stock, there would still be a difficulty to be surmounted, as to a proper rule of apportionment. Different principles would be set up by different states for this purpose; and as they would affect the opposite interests of the parties, they might not easily be susceptible of a pacific adjustment.

In the wide field of Western territory, therefore, we perceive an ample theatre for hostile pretensions, without any umpire or common judge to interpose between the contending parties. To reason from the past to the future, we shall have good ground to apprehend, that the sword would sometimes be appealed to as the arbiter of their differences. The circumstances of the dispute between Connecticut and Pennsylvania, respecting the lands at Wyoming, admonish us not to be sanguine in expecting an easy accommodation of such differences. The articles of confederation obliged the parties to submit the matter to the decision of a federal court. The submission was made, and the court decided in favour of Pennsylvania. But Connecticut gave strong indications of dissatisfaction with that determination; nor did she appear to be entirely resigned to it, till

by negotiation and management, something like an equivalent was found for the loss she supposed herself to have sustained. Nothing here said, is intended to convey the slightest censure on the conduct of that State. She, no doubt, sincerely believed herself to have been injured by the decision; and states, like individuals, acquiesce with great reluctance in determinations to their disadvantage.

Those who had an opportunity of seeing the inside of the transactions, which attended the progress of the controversy between this state and the district of Vermont, can vouch the opposition we experienced, as well from states not interested, as from those which were interested in the claim; and can attest the danger to which the peace of the confederacy might have been exposed, had this state attempted to assert its rights by force. Two motives preponderated in that opposition; one, a jealousy entertained of our future power; another, the interest of certain individuals of influence in the neighbouring states, who had obtained grants of lands under the actual government of that district. Even the states which brought forward claims in contradiction to ours, seemed more solicitous to dismember this state, than to establish their own pretensions. These were New-Hampshire, Massachusetts, and Connecticut. New-Jersey and Rhode-Island, upon all occasions, discovered a warm zeal for the independence of Vermont; and Maryland, until alarmed by the appearance of a connexion between Canada and that place, entered deeply into the same views. These being small states, saw with an unfriendly eye the perspective of our growing greatness. In a review of these transactions, we may trace some of the causes which would be likely to embroil the states

with each other, if it should be their unpropitious destiny to become disunited.

The competitions of commerce would be another fruitful source of contention. The states less favourably circumstanced, would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbours. Each state, or separate confederacy, would pursue a system of commercial polity, peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed from the earliest settlement of the country, would give a keener edge to those causes of discontent, than they would naturally have, independent of this circumstance. *We should be ready to denominate injuries, those things which were in reality the justifiable acts of independent sovereignties consulting a distinct interest.* The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable, that this unbridled spirit would pay much respect to those regulations of trade, by which particular states might endeavour to secure exclusive benefits to their own citizens. The infractions of these regulations on one side; the efforts to prevent and repel them on the other, would naturally lead to outrages, and these to reprisals and wars.

The opportunities which some states would have of rendering others tributary to them by commercial regulations, would be impatiently submitted to by the tributary states. The relative situation of New-York, Connecticut, and New-Jersey, would afford an example of this kind. New-York, from the necessi-

ties of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other states, in the capacity of consumers of what we import. New-York would neither be willing, nor able to forego this advantage. Her citizens would not consent that a duty paid by them should be remitted in favour of the citizens of her neighbours; nor would it be practicable, if there were not this impediment in the way, to distinguish the customers in our own markets.

Would Connecticut and New-Jersey long submit to be taxed by New-York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbours, and, in their opinion, so oppressive? Should we be able to preserve it against the incumbent weight of Connecticut on the one side, and the co-operating pressure of New-Jersey on the other? These are questions that temerity alone will answer in the affirmitive.

The public debt of the Union would be a further cause of collision between the separate states or confederacies. The apportionment, in the first instance, and the progressive extinguishment, afterwards, would be alike productive of ill humour and animosity. How would it be possible to agree upon a rule of apportionment, satisfactory to all? There is scarcely any that can be proposed, which is entirely free from real objections. These, as usual, would be exaggerated by the adverse interest of the parties. There are even dissimilar views among the states, as to the general principle of discharging the public debt. Some of them, either less impressed with the importance of national credit, or because their citi-

zens have little, if any immediate interest in the question, feel an indifference, if not a repugnance to the payment of the domestic debt, at any rate. These would be inclined to magnify the difficulties of a distribution. Others of them, a numerous body of whose citizens are creditors of the public, beyond the proportion of the state in the total amount of the national debt, would be strenuous for some equitable and effectual provision. The procrastinations of the former, would excite the resentments of the latter. The settlement of a rule would, in the mean time, be postponed by real differences of opinion, and affected delays. The citizens of the states interested, would clamour; foreign powers would urge for the satisfaction of their just demands; and the peace of the states would be exposed to the double contingency of external invasion, and internal contention.

But suppose the difficulties of agreeing upon a rule surmounted, and the apportionment made. Still there is great room to suppose, that the rule agreed upon would, in the experiment, be found to bear harder upon some states than upon others. Those which were sufferers by it, would naturally seek for a mitigation of the burthen. The others would as naturally be disinclined to a revision, which was likely to end in an increase of their own incumbrances. Their refusal would afford to the complaining states a pretext for withholding their contributions, too plausible not to be embraced with avidity; and the non-compliance of these states with their engagements, would be a ground of bitter dissention and altercation. If even the rule adopted should in practice justify the equality of its principle, still delinquencies in payment, on the part of some of the states, would result from a diversity of other

causes—the real deficiency of resources; the mismanagement of their finances; accidental disorders in the administration of the government; and in addition to the rest, the reluctance with which men commonly part with money, for purposes that have outlived the exigencies which produced them, and interfere with the supply of immediate wants. Delinquencies, from whatever causes, would be productive of complaints, recriminations, and quarrels. There is, perhaps, nothing more likely to disturb the tranquillity of nations, than their being bound to mutual contributions for any common object, which does not yield an equal and coincident benefit. For it is an observation as true as it is trite, that there is nothing men differ so readily about, as the payment of money.

Laws in violation of private contracts, as they amount to aggressions on the rights of those states whose citizens are injured by them, may be considered as another probable source of hostility. We are not authorized to expect that a more liberal, or more equitable spirit would preside over the legislations of the individual states hereafter, if unrestrained by any additional checks, than we have heretofore seen, in too many instances, disgracing their several codes. We have observed the disposition to retaliation excited in Connecticut, in consequence of the enormities perpetrated by the legislature of Rhode-Island; and we may reasonably infer, that in similar cases, under other circumstances, a war, not of *parchment*, but of the sword, would chastise such atrocious breaches of moral obligation and social justice.

The probability of incompatible alliances between the different states or confederacies, and different foreign nations, and the effects of this situation upon

the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league offensive and defensive, would, by the operation of such opposite and jarring alliances, be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. *Divide et impera* must be the motto of every nation that either hates or fears us.

PUBLIUS.

NUMBER VIII.

BY MR. HAMILTON.

The effects of Internal War, in producing Standing Armies, and other Institutions unfriendly to Liberty.

ASSUMING it, therefore, as an established truth, that, in case of disunion, the several states, or such combinations of them as might happen to be formed out of the wreck of the general confederacy, would be subject to those vicissitudes of peace and war, of friendship and enmity with each other, which have fallen to the lot of all neighbouring nations not united under one government, let us enter into a concise detail of some of the consequences that would attend such a situation.

War between the states, in the first periods of their separate existence, would be accompanied with much greater distresses than it commonly is in those countries, where regular military establishments have long obtained. The disciplined armies always kept on foot on the continent of Europe, though they bear a malignant aspect to liberty and economy, have, notwithstanding, been productive of the signal advantage of rendering sudden conquests impracticable, and of preventing that rapid desolation, which used to mark the progress of war, prior to their introduction. The art of fortification has contributed to the same ends. The nations of Europe are encircled with chains of fortified places, which mutually obstruct invasion. Campaigns are wasted in reducing two or three frontier garrisons, to gain admittance into an enemy's country. Similar impediments occur at every step, to exhaust the strength, and delay the progress of an invader. Formerly an invading army would penetrate into the heart of a neighbouring country, almost as soon as intelligence of its approach could be received; but now, a comparatively small force of disciplined troops, acting on the defensive, with the aid of posts, is able to impede, and finally to frustrate the enterprises of one much more considerable. The history of war, in that quarter of the globe, is no longer a history of nations subdued, and empires overturned; but of towns taken and retaken —of battles that decide nothing—of retreats more beneficial than victories—of much effort and little acquisition.

In this country, the scene would be altogether reversed. The jealousy of military establishments would postpone them as long as possible. The want of fortifications, leaving the frontiers of one state

open to another, would facilitate inroads. The populous states would, with little difficulty, over-run their less populous neighbours. Conquests would be as easy to be made, as difficult to be retained. War, therefore, would be desultory and predatory. Plunder and devastation ever march in the train of irregulars. The calamities of individuals would make the principal figure in the events which would characterize our military exploits.

This picture is not too highly wrought; though, I confess, it would not long remain a just one. Safety from external danger, is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war; the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty, to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.

The institutions chiefly alluded to, are STANDING ARMIES, and the correspondent appendages of military establishment. Standing armies, it is said, are not provided against in the new constitution; and it is thence inferred, that they would exist under it*. This inference, from the very form of the proposition, is, at best, problematical and uncertain.

* This objection will be fully examined in its proper place; and it will be shown, that the only rational precaution which could have been taken on this subject, has been taken; and a much better one than is to be found in any constitution that has been heretofore framed in America, most of which contain no guard at all on this subject.

But STANDING ARMIES, it may be replied, must inevitably result from a dissolution of the confederacy. Frequent war, and constant apprehension, which require a state of as constant preparation, will infallibly produce them. The weaker states or confederacies, would first have recourse to them, to put themselves upon an equality with their more potent neighbours. They would endeavour to supply the inferiority of population and resources, by a more regular and effective system of defence, by disciplined troops, and by fortifications. They would, at the same time, be obliged to strengthen the executive arm of government; in doing which, their constitutions would acquire a progressive direction towards monarchy. It is of the nature of war to increase the executive, at the expense of the legislative authority.

The expedients which have been mentioned, would soon give the states or confederacies that made use of them, a superiority over their neighbours. Small states, or states of less natural strength, under vigorous governments, and with the assistance of disciplined armies, have often triumphed over large states, or states of greater natural strength, which have been destitute of these advantages. Neither the pride nor the safety of the more important states or confederacies, would permit them long to submit to this mortifying and adventitious superiority. They would quickly resort to means similar to those by which it had been effected, to reinstate themselves in their lost pre-eminence. Thus we should in a little time, see established in every part of this country, the same engines of despotism which have been the scourge of the old world. This, at least, would be the natural course of things; and our reasonings

will be likely to be just, in proportion as they are accommodated to this standard.

These are not vague inferences, deduced from speculative defects in a constitution, the whole power of which is lodged in the hands of the people, or their representatives and delegates; they are solid conclusions, drawn from the natural and necessary progress of human affairs.

It may perhaps be asked by way of objection, why did not standing armies spring up out of the contentions which so often distracted the ancient republics of Greece? Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver, and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companion of frequent hostility.

There is a wide difference, also, between military establishments in a country which, by its situation, is seldom exposed to invasions, and in one which is often subject to them, and always apprehensive of them. The rulers of the former can have no good pretext, if they are even so inclined, to keep on foot armies so numerous as must of necessity be maintained in the latter. These armies being, in the first

case, rarely, if at all, called into activity for interior defence, the people are in no danger of being broken to military subordination. The laws are not accustomed to relaxations in favour of military exigencies; the civil state remains in full vigour, neither corrupted nor confounded with the principles or propensities of the other state. The smallness of the army forbids competition with the natural strength of the community, and the citizens, not habituated to look up to the military power for protection, or to submit to its oppressions, neither love nor fear the soldiery: they view them with a spirit of jealous acquiescence in a necessary evil, and stand ready to resist a power which they suppose may be exerted to the prejudice of their rights.

The army under such circumstances, though it may usefully aid the magistrate to suppress a small faction, or an occasional mob or insurrection, will be utterly incompetent to the purpose of enforcing encroachments against the united efforts of the great body of the people.

But in a country where the perpetual menacings of danger oblige the government to be always prepared to repel it, her armies must be numerous enough for instant defence. The continual necessity for his services, enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees, the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to

that of considering them as masters, is neither remote nor difficult: but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations, supported by the military power.

The kingdom of Great-Britain falls within the first description. An insular situation, and a powerful marine, guarding it in a great measure against the possibility of foreign invasion, supersede the necessity of a numerous army within the kingdom. A sufficient force to make head against a sudden descent till the militia could have time to rally and embody, is all that has been deemed requisite. No motive of national policy has demanded, nor would public opinion have tolerated a larger number of troops upon its domestic establishment. This peculiar felicity of situation*, has, in a great degree contributed to preserve the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption. If Britain had been situated on the continent, and had been compelled, as she would have been by that situation, to make her military establishments at home, co-extensive with those of the other great powers of Europe, she, like them, would in all probability at this day be a victim to the absolute power of a single man. It is possible, though not easy, for the people of that island to be enslaved from other causes; but it cannot be by the prowess of an army so inconsiderable as that which has been usually kept up within the kingdom.

If we are wise enough to preserve the union, we

* The recent prodigious aggrandizement of France, has probably altered the situation of Great-Britain in this respect; it will be happy if the alteration has no tendency inauspicious to British liberty.

may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity, will be likely to continue too much disproportioned in strength, to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security. But if we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three confederacies, we should be in a short course of time, in the predicament of the continental powers of Europe. Our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other.

This is an idea not superficial nor futile, but solid and weighty. It deserves the most serious and mature consideration of every prudent and honest man, of whatever party: If such men will make a firm and solemn pause, and meditate dispassionately on its vast importance; if they will contemplate it in all its attitudes, and trace it to all its consequences, they will not hesitate to part with trivial objections to a constitution, the rejection of which would, in all probability, put a final period to the Union. The airy phantoms that now flit before the distempered imaginations of some of its adversaries, would then quickly give place to the more substantial prospects of dangers, real, certain, and extremely formidable.

PUBLIUS.

NUMBER IX.

BY MR. HAMILTON.

The utility of the Union, as a Safeguard against Domestic Faction and Insurrection.

A FIRM union will be of the utmost moment to the peace and liberty of the states, as a barrier against domestic faction and insurrection.

It is impossible to read the history of the petty republics of Greece and Italy, without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions, by which they were kept perpetually vibrating between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrasts to the furious storms that are to succeed. If now and then intervals of felicity open themselves to view, we behold them with a mixture of regret, arising from the reflection, that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction, and tarnish the lustre of those bright talents and exalted endowments, for which the favoured soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics, the advocates of despotism have

drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government, as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partizans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have in a few glorious instances refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices not less magnificent, which will be equally permanent monuments of their error.

But it is not to be denied, that the portraits they have sketched of republican government, were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends of liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments—the introduction of legislative balances and checks—the institution of courts composed of judges, holding their offices during good behaviour—the representation of the people in the legislature, by deputies of their own election—these are either wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained, and its imperfections lessened or avoided. To this

catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single state, or to the consolidation of several smaller states into one great confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single state, which shall be attended to in another place.

The utility of a confederacy, as well to suppress faction and to guard the internal tranquillity of states, as to increase their external force and security, is in reality not a new idea. It has been practised upon in different countries and ages, and has received the sanction of the most approved writers on the subjects of politics. The opponents of the PLAN proposed, have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man, expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions, far short of the limits of almost every one of these states. Neither Virginia, Massachusetts, Pennsylvania, New-York, North-Carolina, nor Georgia, can by any means be compared with the models

from which he reasoned, and to which the terms of his description apply. If we therefore receive his ideas on this point, as the criterion of truth, we shall be driven to the alternative, either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question, seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger states, as a desirable thing. Such an infatuated policy—such a desperate expedient—might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue; but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here, that in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the union; but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general union of the states, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"It is very probable, says he*, that mankind would "have been obliged, at length, to live constantly "under the government of a SINGLE PERSON, had "they not contrived a kind of constitution, that has "all the internal advantages of a republican, together "with the external force of a monarchical govern-"ment. I mean a CONFEDERATE REPUBLIC.

"This form of government is a convention, by "which several smaller *states* agree to become mem-"bers of a larger *one*, which they intend to form. "It is a kind of assemblage of societies, that con-"stitute a new one, capable of increasing by means "of new associations, till they arrive to such a de-"gree of power as to be able to provide for the se-"curity of the united body.

"A republic of this kind, able to withstand an "external force, may support itself without any in-"ternal corruption. The form of this society pre-"vents all manner of inconveniences.

"If a single member should attempt to usurp the "supreme authority, he could not be supposed to "have an equal authority and credit in all the con-"federate states. Were he to have too great influ-"ence over one, this would alarm the rest. Were he "to subdue a part, that which would still remain "free might oppose him with forces, independent of "those which he had usurped, and overpower him "before he could be settled in his usurpation.

"Should a popular insurrection happen in one of "the confederate states, the others are able to quell "it. Should abuses creep into one part, they are "reformed by those that remain sound. The state "may be destroyed on one side, and not on the

* Spirit of Laws, Vol. I. Book IX. Chap. I.

"other; the confederacy may be dissolved, and the
"confederates preserve their sovereignty.

"As this government is composed of small repub-
"lics, it enjoys the internal happiness of each, and
"with respect to its external situation, it is possessed,
"by means of the association, of all the advantages
"of large monarchies."

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favour of the union, and must effectually remove the false impressions which a misapplication of the other parts of the work was calculated to produce. They have, at the same time, an intimate connexion with the more immediate design of this paper; which is to illustrate the tendency of the union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a *confederacy* and a *consolidation* of the states. The essential characteristic of the first, is said to be the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members, has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far

as example will go, that there is no absolute rule on the subject. And it will be clearly shown, in the course of this investigation, that, as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a *confederate republic* seems simply to be, "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority, are mere matters of discretion. So long as the separate organization of the members be not abolished—so long as it exists by a constitutional necessity for local purposes, though it should be in perfect subordination to the general authority of the union—it would still be, in fact and in theory, an association of states, or a confederacy. The proposed constitution, so far from implying an abolition of the state governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the senate, and leaves in their possession certain exclusive and very important portions of the sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to *three* votes in the COMMON COUNCIL, those of the middle class to *two*, and the smallest to *one*. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own

officers. Yet Montesquieu, speaking of this association, says, "Were I to give a model of an excellent "confederate republic, it would be that of Lycia." Thus we perceive, that the distinctions insisted upon, were not within the contemplation of this enlightened writer; and we shall be led to conclude that they are the novel refinements of an erroneous theory.

PUBLIUS.

NUMBER X.

BY MR. MADISON.

The same Subject continued.

AMONG the numerous advantages promised by a well constructed union, none deserves to be more accurately developed, than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have every where perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declama-

tions. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labour, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administration.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the

rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connexion subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties, is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results: and from the influence of these on the sen-

timents and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property.—Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests, forms the principal task of modern legislation, and

involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men, are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought is, that the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good, and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general, been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalised

and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure, and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interest of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly de-

cided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionably greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms, in this respect, a happy combination; the great and aggregate interest being referred to the

national—the local and particular, to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interest; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purpose, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic—is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local

prejudices, and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: A religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to a republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

PUBLIUS.

NUMBER XI.

BY MR. HAMILTON.

The utility of the Union in respect to Commerce and a Navy.

THE importance of the union, in a commercial light, is one of those points, about which there is least room to entertain a difference of opinion, and which has in fact, commanded the most general assent of men, who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries, as with each other.

There are appearances to authorize a supposition, that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe. They seem to be apprehensive of our too great interference in that carrying trade, which is the support of their navigation, and the foundation of their naval strength. Those of them which have colonies in America, look forward, with painful solicitude, to what this country is capable of becoming. They foresee the dangers that may threaten their American dominions from the neighbourhood of states, which have all the dispositions, and would possess all the means, requisite to the creation of a powerful marine. Impressions of this kind will naturally indicate the policy of fostering divisions among us, and depriving us, as far as possible, of an ACTIVE COMMERCE in our own bottoms. This would answer then the threefold purpose of preventing our interference in their navigation, of monopolizing the

profits of our trade, and of clipping the wings, on which we might soar to a dangerous greatness. Did not prudence forbid the detail, it would not be difficult to trace, by facts, the workings of this policy to the cabinets of ministers. If we continue united, we may, in a variety of ways, counteract a policy so unfriendly to our prosperity. By prohibitory regulations, extending at the same time throughout the states, we may oblige foreign countries to bid against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance, to any manufacturing nation, of the markets of three millions of people—increasing in rapid progression; for the most part exclusively addicted to agriculture, and likely, from local circumstances, to remain in this disposition; and the immense difference there would be to the trade and navigation of such a nation, between a direct communication in its own ships, and an indirect conveyance of its products and returns, to and from America, in the ships of another country. Suppose, for instance, we had a government in America, capable of excluding Great-Britain, (with whom we have at present no treaty of commerce,) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negociate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom? When these questions have been asked, upon other occasions, they have received a plausible, but not a solid or satisfactory answer. It has been said, that prohibitions on our part would produce no change in the system of Britain; because she could prosecute her trade with us, through the medium of

the Dutch, who would be her immediate customers and pay-masters for those articles which were wanted for the supply of our markets. But would not her navigation be materially injured, by the loss of the important advantage of being her own carrier in that trade? Would not the principal part of its profits be intercepted by the Dutch, as a compensation for their agency and risk? Would not the mere circumstance of freight occasion a considerable deduction? Would not so circuitous an intercourse facilitate the competitions of other nations, by enhancing the price of British commodities in our markets, and by transferring to other hands the management of this interesting branch of the British commerce?

A mature consideration of the objects suggested by these questions, will justify a belief, that the real disadvantages to Great-Britain, from such a state of things, conspiring with the prepossessions of a great part of the nation in favour of the American trade, and with the importunities of the West-India islands, would produce a relaxation in her present system, and would let us into the enjoyment of privileges in the markets of those islands and elsewhere, from which our trade would derive the most substantial benefits. Such a point gained from the British government, and which could not be expected without an equivalent in exemptions and immunities in our markets, would be likely to have a correspondent effect on the conduct of other nations, who would not be inclined to see themselves altogether supplanted in our trade.

A further resource for influencing the conduct of European nations towards us, in this respect, would arise from the establishment of a federal navy. There can be no doubt, that the continuance of the

union, under an efficient government, would put it in our power, at a period not very distant, to create a navy, which, if it could not vie with those of the great maritime powers, would at least be of respectable weight, if thrown into the scale of either of two contending parties. This would be more particularly the case, in relation to operations in the West-Indies. A few ships of the line, sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which, interests of the greatest magnitude were suspended. Our position is, in this respect, a very commanding one. And if to this consideration we add that of the usefulness of supplies from this country, in the prosecution of military operations in the West-Indies, it will readily be perceived, that a situation so favourable would enable us to bargain with great advantage for commercial privileges. A price would be set not only upon our friendship, but upon our neutrality. By a steady adherence to the union, we may hope, ere long, to become the arbiter of Europe in America; and to be able to incline the balance of European competitions in this part of the world, as our interest may dictate.

But in the reverse of this eligible situation, we shall discover, that the rivalships of the parts would make them checks upon each other, and would frustrate all the tempting advantages, which nature has kindly placed within our reach. In a state so insignificant, our commerce would be a prey to the wanton intermeddlings of all nations at war with each other; who, having nothing to fear from us, would with little scruple or remorse, supply their wants by depredations on our property, as often as it fell in their way. The rights of neutrality will only be

respected, when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral.

Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an impracticability of success. An active commerce, and extensive navigation, a flourishing marine, would then be the inevitable offspring of moral and physical necessity. We might defy the little arts of little politicians to control, or vary, the irresistible and unchangeable course of nature.

But in a state of disunion, these combinations might exist, and might operate with success. It would be in the power of the maritime nations, availing themselves of our universal impotence, to prescribe the conditions of our political existence; and as they have a common interest in being our carriers, and still more in preventing us from becoming theirs, they would, in all probability, combine to embarrass our navigation in such a manner, as would in effect destroy it, and confine us to a PASSIVE COMMERCE. We should thus be compelled to content ourselves with the first price of our commodities, and to see the profits of our trade snatched from us, to enrich our enemies and persecutors. That unequalled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost; and poverty and disgrace would overspread a country, which,

with wisdom, might make herself the admiration and envy of the world.

There are rights of great moment to the trade of America, which are rights of the union: I allude to the fisheries, to the navigation of the Lakes, and to that of the Mississippi. The dissolution of the confederacy would give room for delicate questions, concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage. The disposition of Spain, with regard to the Mississippi, needs no comment. France and Britain are concerned with us in the fisheries; and view them as of the utmost moment to their navigation. They, of course, would hardly remain long indifferent to that decided mastery, of which experience has shown us to be possessed, in this valuable branch of traffic; and by which we are able to undersell those nations in their own markets. What more natural, than that they should be disposed to exclude from the lists such dangerous competitors?

This branch of trade ought not to be considered as a partial benefit. All the navigating states may in different degrees advantageously participate in it; and under circumstances of a greater extension of mercantile capacity, would not be unlikely to do it. As a nursery of seamen, it now is, or when time shall have more nearly assimilated the principles of navigation in the several states, will become an universal resource. To the establishment of a navy, it must be indispensable.

To this great national object, a NAVY, union will contribute in various ways. Every institution will grow and flourish in proportion to the quantity and

extent of the means concentered towards its formation and support. A navy of the United States, as it would embrace the resources of all, is an object far less remote than a navy of any single state, or partial confederacy, which would only embrace the resources of a part. It happens, indeed, that different portions of confederated America, possess each some peculiar advantage for this essential establishment. The more southern states furnish in greater abundance certain kinds of naval stores—tar, pitch, and turpentine. Their wood, for the construction of ships, is also of a more solid and lasting texture. The difference in the duration of the ships of which the navy might be composed, if chiefly constructed of southern wood, would be of signal importance, either in the view of naval strength, or of national economy. Some of the southern and of the middle states, yield a greater plenty of iron, and of better quality. Seamen must chiefly be drawn from the northern hive. The necessity of naval protection to external or maritime commerce, and the conducivenes of that species of commerce, to the prosperity of a navy, are points too manifest to require a particular elucidation. They, by a kind of reaction, mutually beneficial, promote each other.

An unrestrained intercourse between the states themselves, will advance the trade of each, by an interchange of their respective productions, not only for the supply of reciprocal wants, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigour from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different states.

When the staple of one fails, from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation, contributes to the activity of foreign commerce. It can be conducted upon much better terms, with a large number of materials of a given value, than with a small number of materials of the same value; arising from the competitions of trade, and from the fluctuations of markets. Particular articles may be in great demand at certain periods, and unsaleable at others; but if there be a variety of articles, it can scarcely happen that they should all be at one time in the latter predicament; and on this account, the operation of the merchant would be less liable to any considerable obstruction or stagnation. The speculative trader will at once perceive the force of these observations; and will acknowledge that the aggregate balance of the commerce of the United States, would bid fair to be much more favourable than that of the Thirteen States, without union, or with partial unions.

It may perhaps be replied to this, that whether the states are united or disunited, there would still be an intimate intercourse between them, which would answer the same ends: But this intercourse would be fettered, interrupted, and narrowed, by a multiplicity of causes; which in the course of these papers have been amply detailed. An unity of commercial, as well as political interests, can only result from an unity of government.

There are other points of view, in which this subject might be placed, of a striking and animating kind. But they would lead us too far into the regions of futurity, and would involve topics not proper for newspaper discussion. I shall briefly observe

that our situation invites, and our interests prompt us, to aim at an ascendant in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negociations; by force and by fraud, has, in different degrees, extended her dominion over them all. Africa, Asia, and America, have successively felt her domination. The superiority she has long maintained, has tempted her to plume herself as the mistress of the world, and to consider the rest of mankind as created for her benefit. Men admired as profound philosophers, have, in direct terms, attributed to her inhabitants a physical superiority; and have gravely asserted that all animals, and with them the human species, degenerate in America—that even dogs cease to bark, after having breathed a while in our atmosphere *. Facts have too long supported these arrogant pretensions of the European: It belongs to us to vindicate the honour of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness! Let the Thirteen States, bound together in a strict and indissoluble union, concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connexion between the old and the new world!

PUBLIUS.

* Recherches philosophiques sur les Americains.

NUMBER XII.

BY MR. HAMILTON.

The utility of the Union in respect to Revenue.

THE effects of union, upon the commercial prosperity of the states, have been sufficiently delineated. Its tendency to promote the interests of revenue, will be the subject of our present inquiry.

A prosperous commerce is now perceived and acknowledged, by all enlightened statesmen, to be the most useful, as well as the most productive, source of national wealth: and has accordingly become a primary object of their political cares. By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify and invigorate all the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer—all orders of men, look forward with eager expectation and growing alacrity, to this pleasing reward of their toils. The often-agitated question between agriculture and commerce, has, from indubitable experience, received a decision, which has silenced the rivalships that once subsisted between them, and has proved, to the entire satisfaction of their friends, that their interests are intimately blended and interwoven. It has been found, in various countries, that in proportion as commerce has flourished, land has risen in value.

And how could it have happened otherwise? Could that which procures a freer vent for the products of the earth; which furnishes new incitements to the cultivators of land; which is the most powerful instrument in increasing the quantity of money in a state—could that, in fine, which is the faithful handmaid of labour and industry, in every shape, fail to augment the value of that article, which is the prolific parent of far the greatest part of the objects upon which they are exerted? It is astonishing, that so simple a truth should ever have had an adversary; and it is one, among a multitude of proofs, how apt a spirit of ill-informed jealousy, or of too great abstraction and refinement, is to lead men astray from the plainest paths of reason and conviction.

The ability of a country to pay taxes, must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury. The hereditary dominions of the emperor of Germany, contain a great extent of fertile, cultivated, and populous territory, a large proportion of which is situated in mild and luxuriant climates. In some parts of this territory are to be found the best gold and silver mines in Europe. And yet, from the want of the fostering influence of commerce, that monarch can boast but slender revenues. He has several times been compelled to owe obligations to the pecuniary succours of other nations, for the preservation of his essential interests; and is unable, upon the strength of his own resources, to sustain a long or continued war.

But it is not in this aspect of the subject alone,

that union will be seen to conduce to the purposes of revenue. There are other points of view, in which its influence will appear more immediate and decisive. It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasuries of the states have remained empty. The popular system of administration, inherent in the nature of popular government, coinciding with the real scarcity of money, incident to a languid and mutilated state of trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them.

No person, acquainted with what happens in other countries, will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes, from superior wealth, must be much more tolerable, and from the vigour of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind; from imposts, and from excises. Duties on imported articles, form a large branch of this latter description.

In America, it is evident, that we must a long time depend for the means of revenue, chiefly on such duties. In most parts of it, excises must be confined within a narrow compass. The genius of the people will illy brook the inquisitive and peremptory spirit of excise laws. The pockets of the farmers, on the other hand, will reluctantly yield

but scanty supplies, in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way, than by the imperceptible agency of taxes on consumption.

If these remarks have any foundation, that state of things which will best enable us to improve and extend so valuable a resource, must be the best adapted to our political welfare. And it cannot admit of a serious doubt, that this state of things must rest on the basis of a general union. As far as this would be conducive to the interests of commerce, so far it must tend to the extension of the revenue to be drawn from that source. As far as it would contribute to render regulations for the collection of the duties more simple and efficacious, so far it must serve to answer the purposes of making the same rate of duties more productive, and of putting it into the power of government to increase the rate, without prejudice to trade.

The relative situation of these states; the number of rivers with which they are intersected, and of bays that wash their shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse; all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty; and would ensure frequent evasions of the commercial regulations of each other. The separate states, or confederacies, would be driven by mutual jealousy to avoid the temptations to that kind of trade, by the lowness of their duties. The temper of our governments, for a long time to come, would not permit those rigorous precautions, by which the European nations guard the avenues into

their respective countries, as well by land as by water, and which, even there, are found insufficient obstacles to the adventurous stratagems of avarice.

In France, there is an army of patrols, (as they are called,) constantly employed to secure her fiscal regulations against the inroads of the dealers in contraband. Mr. Neckar computes the number of these patrols at upwards of twenty thousand. This proves the immense difficulty in preventing that species of traffic, where there is an inland communication, and shows, in a strong light, the disadvantages, with which the collection of duties in this country would be incumbered, if by disunion the states should be placed in a situation with respect to each other, resembling that of France with respect to her neighbours. The arbitrary and vexatious powers with which the patrols are necessarily armed, would be intolerable in a free country.

If, on the contrary, there be but one government pervading all the states, there will be, as to the principal part of our commerce, but ONE SIDE to guard, the ATLANTIC COAST. Vessels arriving directly from foreign countries, laden with valuable cargoes, would rarely choose to expose themselves to the complicated and critical perils, which would attend attempts to unlade prior to their coming into port. They would have to dread both the dangers of the coast, and of detection, as well after, as before their arrival at the places of their final destination. An ordinary degree of vigilance, would be competent to the prevention of any material infractions upon the rights of the revenue. A few armed vessels, judiciously stationed and employed, might at small expense, be made useful sentinels of the laws. And the government, having the same interest to provide

against violations every where, the co-operation of its measures in each state, would have a powerful tendency to render them effectual. Here also we should preserve, by union, an advantage which nature holds out to us, and which would be relinquished by separation. The United States lie at a great distance from Europe, and at a considerable distance from all other places, with which they would have extensive connexions of foreign trade. The passage from them to us in a few hours, or in a single night, as between the coasts of France and Britain, and of other neighbouring nations, would be impracticable. This is a prodigious security against a direct contraband with foreign countries; but a circuitous contraband to one state, through the medium of another, would be both easy and safe. The difference between a direct importation from abroad, and an indirect importation, through the channel of an adjoining state, in small parcels, according to time and opportunity, with the additional facilities of inland communication, must be palpable to every man of discernment.

It is therefore evident, that one national government would be able, at much less expense, to extend the duties on imports, beyond comparison further than would be practicable to the states separately, or to any partial confederacies. Hitherto I believe it may safely be asserted, that these duties have not upon an average exceeded in any state three per cent. In France they are estimated at about fifteen per cent. and in Britain the proportion is still greater. There seems to be nothing to hinder their being increased in this country, to at least treble their present amount. The single article of ardent spirits, under

federal regulation, might be made to furnish a considerable revenue. According to the ratio of importation into this state, the whole quantity imported into the United States may, at a low computation, be estimated at four millions of gallons; which at a shilling per gallon, would produce two hundred thousand pounds. That article would well bear this rate of duty; and if it should tend to diminish the consumption of it, such an effect would be equally favourable to the agriculture, to the economy, to the morals, and to the health of society. There is, perhaps, nothing so much a subject of national extravagance, as this very article.

What will be the consequence, if we are not able to avail ourselves of the resource in question in its full extent? A nation cannot long exist without revenue. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue therefore must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land. It has been already intimated that excises, in their true signification, are too little in unison with the feelings of the people, to admit of great use being made of that mode of taxation: nor indeed, in the states where almost the sole employment is agriculture, are the objects proper for excise sufficiently numerous, to permit very ample collections in that way. Personal estate, as before remarked, from the difficulty of tracing it, cannot be subjected to large contributions, by any other means than by taxes on consumption. In populous cities, it may be enough the subject of conjecture, to occasion the oppression

of individuals, without much aggregate benefit to the state; but beyond these circles, it must, in a great measure, escape the eye and the hand of the tax-gatherer. As the necessities of the state, nevertheless, must be satisfied in some mode, the defect of other resources must throw the principal weight of the public burthens on the possessors of land. And as, on the other hand, the wants of the government can never obtain an adequate supply, unless all the sources of revenue are open to its demands, the finances of the community, under such embarrassments, cannot be put into a situation consistent with its respectability or its security. Thus we shall not even have the consolations of a full treasury, to atone for the oppression of that valuable class of citizens, who are employed in the cultivation of the soil. But public and private distress will keep pace with each other in gloomy concert; and unite in deploring the infatuation of those counsels which led to disunion.

PUBLIUS.

NUMBER XIII.

BY MR. HAMILTON.

The same Subject continued, with a view to Economy.

As connected with the subject of revenue, we may with propriety consider that of economy. The money saved from one object, may be usefully applied to another; and there will be so much the less to

be drawn from the pockets of the people. If the states be united under one government, there will be but one national civil list to support; if they are divided into several confederacies, there will be as many different national civil lists to be provided for; and each of them, as to the principal departments, co-extensive with that which would be necessary for a government of the whole. The entire separation of the states into thirteen unconnected sovereignties, is a project too extravagant, and too replete with danger, to have many advocates. The ideas of men who speculate upon the dismemberment of the empire, seem generally turned towards three confederacies; one consisting of the four northern, another of the four middle, and a third of the five southern states. There is little probability that there would be a great number. According to this distribution, each confederacy would comprise an extent of territory larger than that of the kingdom of Great-Britain. No well-informed man will suppose that the affairs of such a confederacy can be properly regulated by a government, less comprehensive in its organs or institutions, than that which has been proposed by the convention. When the dimensions of a state attain to a certain magnitude, it requires the same energy of government, and the same forms of administration, which are requisite in one of much greater extent. This idea admits not of precise demonstration, because there is no rule by which we can measure the momentum of civil power, necessary to the government of any given number of individuals; but when we consider that the Island of Britain, nearly commensurate with each of the supposed confederacies, contains about eight millions of people, and when we reflect upon the

degree of authority required to direct the passions of so large a society to the public good, we shall see no reason to doubt, that the like portion of power would be sufficient to perform the same task in a society far more numerous. Civil power, properly organized and exerted, is capable of diffusing its force to a very great extent; and can, in a manner, reproduce itself in every part of a great empire, by a judicious arrangement of subordinate institutions.

The supposition, that each confederacy into which the states would be likely to be divided, would require a government not less comprehensive than the one proposed, will be strengthened by another conjecture, more probable than that which presents us with three confederacies, as the alternative to a general union. If we attend carefully to geographical and commercial considerations, in conjunction with the habits and prejudices of the different states, we shall be led to conclude, that in case of disunion, they will most naturally league themselves under two governments. The four eastern states, from all the causes that form the links of national sympathy and connexion, may with certainty be expected to unite. New-York, situated as she is, would never be unwise enough to oppose a feeble and unsupported flank to the weight of that confederacy. There are obvious reasons, that would facilitate her accession to it. New-Jersey is too small a state to think of being a frontier, in opposition to this still more powerful combination; nor do there appear to be any obstacles to her admission into it. Even Pennsylvania would have strong inducements to join the northern league. An active foreign commerce, on the basis of her own navigation, is her true policy, and coincides with the opinions and dispositions of her

citizens. The more southern states, from various circumstances, may not think themselves much interested in the encouragement of navigation. They may prefer a system, which would give unlimited scope to all nations, to be the carriers, as well as the purchasers, of their commodities. Pennsylvania may not choose to confound her interests in a connexion so adverse to her policy. As she must, at all events, be a frontier, she may deem it most consistent with her safety, to have her exposed side turned towards the weaker power of the southern, rather than towards the stronger power of the northern confederacy. This would give her the fairest chance to avoid being the FLANDERS of America. Whatever may be the determination of Pennsylvania, if the northern confederacy includes New-Jersey, there is no likelihood of more than one confederacy to the south of that state.

Nothing can be more evident than that the Thirteen States will be able to support a national government, better than one half, or one third, or any number less than the whole. This reflection must have great weight in obviating that objection to the proposed plan, which is founded on the principle of expense; an objection however, which, when we come to take a nearer view of it, will appear in every light to stand on mistaken ground.

If, in addition to the consideration of a plurality of civil lists, we take into view the number of persons who must necessarily be employed to guard the inland communication, between the different confederacies, against illicit trade, and who in time will infallibly spring up out of the necessities of revenue; and if we also take into view the military establishments, which it has been shown would unavoidably

result from the jealousies and conflicts of the several nations, into which the states would be divided, we shall clearly discover that a separation would be not less injurious to the economy, than to the tranquillity, commerce, revenue, and liberty, of every part.

PUBLIUS.

NUMBER XIV.

BY MR. MADISON.

An Objection drawn from the Extent of Country, answered.

WE have seen the necessity of the union, as our bulwark against foreign danger; as the conservator of peace among ourselves; as the guardian of our commerce, and other common interests; as the only substitute for those military establishments which have subverted the liberties of the old world; and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains, within this branch of our inquiries, is to take notice of an objection, that may be drawn from the great extent of country which the union embraces. A few observations, on this subject, will be the more proper, as it is perceived, that the adversaries of the new constitution are taking advantage of a prevailing prejudice, with regard to the practicable sphere of republican administration, in order to supply, by ima-

ginary difficulties, the want of those solid objections, which they endeavour in vain to find.

The error which limits republican government to a narrow district, has been unfolded and refuted in preceding papers. I remark here only, that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy—and by applying to the former, reasons drawn from the nature of the latter. The true distinction between these forms, was also adverted to on a former occasion.—It is, that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, must be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error, may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavoured to heighten the advantages, or palliate the evils, of those forms, by placing, in comparison with them, the vices and defects of the republican—and by citing, as specimens of the latter, the turbulent democracies of ancient Greece, and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic, observations applicable to a democracy only; and, among others, the observation, that it can never be established, but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern

Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which, the will of the largest political body may be concentered, and its force directed to any object which the public good requires—America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented, that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy, is that distance from the central point, which will but just permit the most remote citizens to assemble as often as their public functions demand; and will include no greater number than can join in those functions: so the natural limit of a republic, is that distance from the center, which will barely allow the representatives of the people to meet as often as may be necessary for the administration of public affairs. Can it be said, that the limits of the United States exceed this distance? It will not be said by those who recollect, that the Atlantic coast is the longest side of the union; that, during the term of thirteen years, the representatives of the states have been almost continually assembled; and that the members, from the most distant states, are not chargeable with greater intermissions of attendance, than those from the states in the neighbourhood of Congress.

That we may form a juster estimate with regard to this interesting subject, let us resort to the actual

dimensions of the union. The limits, as fixed by the treaty of peace, are on the east the Atlantic, on the south the latitude of thirty-one degrees, on the west the Missisippi, and on the north an irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees, to seven hundred sixty-four miles and a half. Taking the mean for the distance, the amount will be eight hundred sixty-eight miles and three fourths. The mean distance from the Atlantic to the Missisippi, does not probably exceed seven hundred and fifty miles. On a comparison of this extent, with that of several countries in Europe, the practicability of rendering our system commensurate to it, appears to be demonstrable. It is not a great deal larger than Germany, where a diet, representing the whole empire, is continually assembled; or than Poland before the late dismemberment, where another national diet was the depository of the supreme power. Passing by France and Spain, we find that in Great-Britain, inferior as it may be in size, the representatives of the northern extremity of the island, have as far to travel to the national council, as will be required of those of the remote parts of the union.

Favourable as this view of the subject may be, some observations remain, which will place it in a light still more satisfactory.

In the first place, it is to be remembered, that the general government is not to be charged with the whole power of making and administering laws: its

jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other objects, which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention, to abolish the governments of the particular states, its adversaries would have some ground for their objection; though it would not be difficult to show, that if they were abolished, the general government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction.

A second observation to be made is, that the immediate object of the federal constitution, is to secure the union of the Thirteen primitive States, which we know to be practicable; and to add to them such other states, as may arise in their own bosoms, or in their neighbourhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory, which lie on our north-western frontier, must be left to those whom further discoveries and experience will render more equal to the task.

Let it be remarked, in the third place, that the intercourse throughout the union will be daily facilitated by new improvements. Roads will every where be shortened, and kept in better order; accommodations for travellers will be multiplied and meliorated; an interior navigation on our eastern side, will be opened throughout, or nearly throughout, the whole extent of the Thirteen States. The communication between the western and Atlantic districts, and between different parts of each, will

be rendered more and more easy, by those numerous canals, with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

A fourth, and still more important consideration, is, that as almost every state will, on one side or other, be a frontier, and will thus find in a regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the states which lie at the greatest distance from the heart of the union, and which of course may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand, on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia, or the states forming our western or north-eastern borders, to send their representatives to the seat of government; but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions, which may be dictated by the neighbourhood of continual danger. If they should derive less benefit, therefore, from the union in some respects, than the less distant states, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout.

I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions, will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scenes into which the advocates for dis-

union would conduct you. Hearken not to the unnatural voice, which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens of one great, respectable, and flourishing empire. Hearken not to the voice, which petulantly tells you, that the form of government recommended for your adoption, is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen; shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defence of their sacred rights, consecrate their union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces, in order to preserve our liberties, and promote our happiness. But why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to over-rule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for

the possession, and the world for the example, of the numerous innovations displayed on the American theatre, in favour of private rights and public happiness. Had no important step been taken by the leaders of the revolution, for which a precedent could not be discovered, no government established, of which an exact model did not present itself, the people of the United States might, at this moment, have been numbered among the melancholy victims of misguided councils; must at best have been labouring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily we trust for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the union, this was the work most difficult to be executed; this is the work which has been new-modelled by the act of your convention, and it is that act on which you are now to deliberate and to decide.

PUBLIUS.

NUMBER XV.

BY MR. HAMILTON.

Concerning the Defects of the present Confederation, in relation to the principle of Legislation for the States in their collective capacities.

IN the course of the preceding papers, I have endeavoured, my fellow-citizens, to place before you in a clear and convincing light, the importance of union to your political safety and happiness. I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot, which binds the people of America together, to be severed or dissolved by ambition or by avarice, by jealousy or by misrepresentation. In the sequel of the inquiry through which I propose to accompany you, the truths intended to be inculcated will receive further confirmation from facts and arguments hitherto unnoticed. If the road, over which you will still have to pass, should in some places appear to you tedious or irksome, you will recollect, that you are in quest of information on a subject the most momentous, which can engage the attention of a free people; that the field through which you have to travel is in itself spacious, and that the difficulties of the journey have been unnecessarily increased by the mazes with which sophistry has beset the way. It will be my aim to remove the obstacles to your progress, in as compendious a manner as it can be done, without sacrificing utility to dispatch.

In pursuance of the plan which I have laid down for the discussion of the subject, the point next in order to be examined, is the "insufficiency of the "present confederation to the preservation of the "union."

It may perhaps be asked, what need there is of reasoning or proof to illustrate a position, which is neither controverted nor doubted; to which the understandings and feelings of all classes of men assent; and which in substance is admitted by the opponents as well as by the friends of the new constitution? It must in truth be acknowledged, that however these may differ in other respects, they in general appear to harmonize in the opinion, that there are material imperfections in our national system, and that something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion, are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted from those, whose mistaken policy has had the principal share in precipitating the extremity at which we are arrived, a reluctant confession of the reality of many of those defects in the scheme of our federal government, which have been long pointed out and regretted by the intelligent friends of the union.

We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character, of an independent people, which we do not experience. Are there engagements, to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do

we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interest not less than of our rights. Are we in a condition to resent, or to repel the aggression? We have neither troops, nor treasury, nor government *. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled, by nature and compact, to a free participation in the navigation of the Missisippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers, a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us: Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land, a symptom of national distress? The price of improved land, in most parts of the country, is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among

* I mean for the union.

all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending, is reduced within the narrowest limits, and this still more from an opinion of insecurity than from a scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

This is the melancholy situation to which we have been brought by those very maxims and counsels, which would now deter us from adopting the proposed constitution; and which, not content with having conducted us to the brink of a precipice, seem resolved to plunge us into the abyss that awaits us below. Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity.

It is true, as has been before observed, that facts too stubborn to be resisted, have produced a species of general assent to the abstract proposition, that there exist material defects in our national system; but the usefulness of the concession, on the part of the old adversaries of federal measures, is destroyed by a strenuous opposition to a remedy, upon the only principles that can give it a chance of success. While they admit that the government of the Uni-

ted States is destitute of energy, they contend against conferring upon it those powers which are requisite to supply that energy. They seem still to aim at things repugnant and irreconcileable; at an augmentation of federal authority, without a diminution of state authority; at sovereignty in the union, and complete independence in the members. They still, in fine, seem to cherish with blind devotion the political monster of an *imperium in imperio*. This renders a full display of the principal defects of the confederation necessary, in order to show, that the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended, otherwise than by an alteration in the very elements and main pillars of the fabric.

The great and radical vice in the construction of the existing confederation, is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist. Though this principle does not run through all the powers delegated to the union; yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that though in theory, their resolutions concerning those objects, are laws, constitutionally binding on the members of the union, yet, in practice, they are mere recommendations, which the states observe or disregard at their option.

It is a singular instance of the capriciousness of the human mind, that, after all the admonitions we have had from experience on this head, there should still be found men, who object to the new constitution, for deviating from a principle which has been found the bane of the old; and which is, in itself, evidently incompatible with the idea of a GOVERNMENT; a principle, in short, which, if it is to be executed at all, must substitute the violent and sanguinary agency of the sword, to the mild influence of the magistracy.

There is nothing absurd or impracticable, in the idea of a league or alliance between independent nations, for certain defined purposes precisely stated in a treaty; regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war; of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century, there was an epidemical rage in Europe for this species of compacts; from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power, and the peace of that part of the world, all the resources of negociation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive, but afflicting lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith; and which oppose general considerations of peace and

justice, to the impulse of any immediate interest or passion.

If the particular states in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being at least consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance, offensive and defensive; and would place us in a situation to be alternately friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients, which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens—the only proper objects of government.

Government implies the power of making laws.—It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws, will in fact amount to nothing more than advice or recommendation.—This penalty, whatever it may be, can only be inflicted in two ways; by the agency of the courts

and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity be employed against bodies politic, or communities or states. It is evident, that there is no process of a court by which their observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association, where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war, and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

There was a time when we were told that breaches by the states, of the regulations of the federal authority, were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint.

Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation, has a less active influence, when the infamy of a bad action is to be divided among a number, than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons, of whom they are composed, into improprieties and excesses, for which they would blush in a private capacity.

In addition to all this, there is, in the nature of sovereign power, an impatience of control, which disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which, there will be a perpetual effort in each to fly off from the common center. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power, controlled or abridged, is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons entrusted with the administration of the affairs of the particular members of a confederacy, will at all times be ready, with perfect good humour, and an unbiassed regard to the public weal, to execute the resolutions

or decrees of the general authority. The reverse of this results from the constitution of man.

If therefore the measures of the confederacy cannot be executed, without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favour of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies; who have seen how difficult it often is, when there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times, and under different impressions, long to cooperate in the same views and pursuits.

In our case, the concurrence of thirteen distinct sovereign wills is requisite under the confederation,

to the complete execution of every important measure, that proceeds from the union. It has happened, as was to have been foreseen. The measures of the union have not been executed; the delinquences of the states have, step by step, matured themselves to an extreme, which has at length arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration, till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified, produced at first only unequal and disproportionate degrees of compliance with the requisitions of the union. The greater deficiencies of some states furnished the pretext of example, and the temptation of interest to the complying, or at least delinquent states. Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burthen? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not without hesitation combat. Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins.

PUBLIUS.

NUMBER XVI.

BY MR. HAMILTON.

The same Subject continued, in relation to the same Principles.

THE tendency of the principle of legislation for states or communities in their political capacities, as it has been exemplified by the experiment we have made of it, is equally attested by the events which have befallen all other governments of the confederate kind, of which we have any account, in exact proportion to its prevalence in those systems. The confirmations of this fact will be worthy of a distinct and particular examination. I shall content myself with barely observing here, that of all the confederacies of antiquity which history has handed down to us, the Lycian and Achæan leagues, as far as there remain vestiges of them, appear to have been most free from the fetters of that mistaken principle, and were accordingly those which have best deserved, and have most liberally received, the applauding suffrages of political writers.

This exceptionable principle may, as truly as emphatically, be styled the parent of anarchy: It has been seen that delinquences in the members of the union are its natural and necessary offspring; and that whenever they happen, the only constitutional remedy is force, and the immediate effect of the use of it, civil war.

It remains to inquire how far so odious an engine of government, in its application to us, would even

be capable of answering its end. If there should not be a large army, constantly at the disposal of the national government, it would either not be able to employ force at all, or when this could be done, it would amount to a war between different parts of the confederacy, concerning the infractions of a league; in which the strongest combination would be most likely to prevail, whether it consisted of those who supported, or of those who resisted the general authority. It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one, who had neglected their duty, similarity of situation would induce them to unite for common defence. Independent of this motive of sympathy, if a large and influential state should happen to be the aggressing member, it would commonly have weight enough with its neighbours, to win over some of them as associates to its cause. Specious arguments of danger to the general liberty could easily be contrived; plausible excuses for the deficiencies of the party, could, without difficulty, be invented, to alarm the apprehensions, inflame the passions, and conciliate the good will even of those states which were not chargeable with any violation, or omission of duty. This would be the more likely to take place, as the delinquences of the larger members might be expected sometimes to proceed from an ambitious premeditation in their rulers, with a view to getting rid of all external control upon their designs of personal aggrandizement; the better to effect which, it is presumable they would tamper before-hand with leading individuals in the adjacent states. If associates could not be found at home, recourse would be had to the aid of foreign powers, who would seldom be disinclined to encou-

raging the dissentions of a confederacy, from the firm union of which they had so much to fear. When the sword is once drawn, the passions of men observe no bounds of moderation. The suggestions of wounded pride, the instigations of irritated resentment, would be apt to carry the states, against which the arms of the union were exerted, to any extremes necessary to avenge the affront, or to avoid the disgrace of submission. The first war of this kind would probably terminate in a dissolution of the union.

This may be considered as the violent death of the confederacy. Its more natural death is what we now seem to be on the point of experiencing, if the federal system be not speedily renovated in a more substantial form. It is not probable, considering the genius of this country, that the complying states would often be inclined to support the authority of the union, by engaging in a war against the non-complying states. They would always be more ready to pursue the milder course of putting themselves upon an equal footing with the delinquent members, by an imitation of their example. And the guilt of all would thus become the security of all. Our past experience has exhibited the operation of this spirit in its full light. There would in fact be an insuperable difficulty in ascertaining when force could with propriety be employed. In the article of pecuniary contribution, which would be the most usual source of delinquency, it would often be impossible to decide whether it had proceeded from disinclination, or inability. The pretence of the latter would always be at hand. And the case must be very flagrant in which its fallacy could be detected with sufficient certainty to justify the harsh expe-

dient of compulsion. It is easy to see that this problem alone, as often as it should occur, would open a wide field to the majority that happened to prevail in the national council, for the exercise of factious views, of partiality, and of oppression.

It seems to require no pains to prove that the states ought not to prefer a national constitution, which could only be kept in motion by the instrumentality of a large army, continually on foot to execute the ordinary requisitions or decrees of the government. And yet this is the plain alternative involved by those who wish to deny it the power of extending its operations to individuals. Such a scheme, if practicable at all, would instantly degenerate into a military despotism; but it will be found in every light impracticable. The resources of the union would not be equal to the maintenance of an army considerable enough to confine the larger states within the limits of their duty; nor would the means ever be furnished of forming such an army in the first instance. Whoever considers the populousness and strength of several of these states singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme, which aims at regulating their movements by laws, to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit, attributed to the fabulous heroes and demi-gods of antiquity.

Even in those confederacies, which have been composed of members smaller than many of our counties, the principle of legislation for sovereign states,

supported by military coercion, has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient, have been the signals of bloody wars; in which one half of the confederacy has displayed its banners against the other.

The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating the common concerns, and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the union, like that of each state, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support, those passions, which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the governments of the particular states.

To this reasoning it may perhaps be objected, that if any state should be disaffected to the authority of the union, it could at any time obstruct the execution of its laws, and bring the matter to the same

issue of force, with the necessity of which the opposite scheme is reproached.

The plausibility of this objection will vanish the moment we advert to the essential difference between a mere NON-COMPLIANCE and a DIRECT and ACTIVE RESISTANCE. If the interposition of the state legislatures be necessary to give effect to a measure of the union, they have only NOT TO ACT, or TO ACT EVASIVELY, and the measure is defeated. This neglect of duty may be disguised under affected, but unsubstantial provisions, so as not to appear, and of course not to excite any alarm in the people for the safety of the constitution. The state leaders may even make a merit of their surreptitious invasions of it, on the ground of some temporary convenience, exemption, or advantage.

But if the execution of the laws of the national government should not require the intervention of the state legislatures; if they were to pass into immediate operation upon the citizens themselves, the particular governments could not interrupt their progress without an open and violent exertion of an unconstitutional power. No omission, nor evasions, would answer the end. They would be obliged to act, and in such a manner, as would leave no doubt that they had encroached on the national rights. An experiment of this nature would always be hazardous, in the face of a constitution in any degree competent to its own defence, and of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority. The success of it would require not merely a factious majority in the legislature, but the concurrence of the courts of justice, and of the body of the people. If the judges were not embarked in a conspiracy with

the legislature, they would pronounce the resolutions of such a majority to be contrary to the supreme law of the land, unconstitutional, and void. If the people were not tainted with the spirit of their state representatives, they, as the natural guardians of the constitution, would throw their weight into the national scale, and give it a decided preponderancy in the contest. Attempts of this kind would not often be made with levity or rashness; because they could seldom be made without danger to the authors, unless in cases of tyrannical exercise of the federal authority.

If opposition to the national government should arise from the disorderly conduct of refractory or seditious individuals, it could be overcome by the same means which are daily employed against the same evil under the state governments. The magistracy, being equally the ministers of the law of the land, from whatever source it might emanate, would, doubtless, be as ready to guard the national as the local regulations, from the inroads of private licentiousness. As to those partial commotions and insurrections, which sometimes disquiet society, from the intrigues of an inconsiderable faction, or from sudden or occasional ill humours, that do not infect the great body of the community, the general government could command more extensive resources, for the suppression of disturbances of that kind, than would be in the power of any single member. And as to those mortal feuds, which, in certain conjunctures, spread a conflagration through a whole nation, or through a very large proportion of it, proceeding either from weighty causes of discontent, given by the government, or from the contagion of some violent popular paroxysm, they do not fall within any ordinary rules

of calculation. When they happen, they commonly amount to revolutions and dismemberments of empire. No form of government can always either avoid or control them. It is in vain to hope to guard against events too mighty for human foresight or precaution; and it would be idle to object to a government, because it could not perform impossibilities.

PUBLIUS.

NUMBER XVII.

BY MR. HAMILTON.

The Subject continued, and illustrated by Examples, to show the tendency of Federal Governments, rather to Anarchy among the Members, than Tyranny in the Head.

AN objection, of a nature different from that which has been stated and answered in my last address, may, perhaps, be urged against the principle of legislation for the individual citizens of America. It may be said, that it would tend to render the government of the union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the states for local purposes. Allowing the utmost latitude to the love of power, which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government, could ever feel to divest the states of the authorities of that description. The

regulation of the mere domestic police of a state, appears to me to hold out slender allurements to ambition. Commerce, finance, negociation, and war, seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects, ought, in the first instance, to be lodged in the national depository. The administration of private justice between the citizens of the same state; the supervision of agriculture, and of other concerns of a similar nature; all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable, that there should exist a disposition in the federal councils, to usurp the powers with which they are connected; because the attempt to exercise them, would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendour, of the national government.

But let it be admitted, for argument sake, that mere wantonness, and lust of domination, would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the national representatives, or, in other words, of the people of the several states, would control the indulgence of so extravagant an appetite. It will always be far more easy for the state governments to encroach upon the national authorities, than for the national government to encroach upon the state authorities. The proof of this proposition turns upon the greater degree of influence which the state governments, if they administer their affairs with uprightness and prudence, will generally possess

over the people; a circumstance which at the same time teaches us, that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty.

The superiority of influence in favour of the particular governments, would result partly from the diffusive construction of the national government; but chiefly from the nature of the objects to which the attention of the state administrations would be directed.

It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighbourhood, to his neighbourhood than to the community at large, the people of each state would be apt to feel a stronger bias towards their local governments, than towards the government of the union, unless the force of that principle should be destroyed by a much better administration of the latter.

This strong propensity of the human heart, would find powerful auxiliaries in the objects of state regulation.

The variety of more minute interests, which will necessarily fall under the superintendence of the local administrations, and which will form so many rivulets of influence, running through every part of the society, cannot be particularized, without involving a detail too tedious and uninteresting, to compensate for the instruction it might afford.

There is one transcendent advantage belonging to the province of state governments, which alone suf-

fess to place the matter in a clear and satisfactory light—I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is this, which, being the immediate and visible guardian of life and property; having its benefits and its terrors in constant activity before the public eye; regulating all those personal interests, and familiar concerns, to which the sensibility of individuals is most immediately awake; contributes, more than any other circumstance, to impress upon the minds of the people affection, esteem, and reverence towards the government. This great cement of society, which will diffuse itself almost wholly through the channels of the particular governments, independent of all other causes of influence, would insure them so decided an empire over their respective citizens, as to render them at all times a complete counterpoise, and not unfrequently dangerous rivals to the power of the union.

The operations of the national government, on the other hand, falling less immediately under the observation of the mass of the citizens, the benefits derived from it will chiefly be perceived, and attended to by speculative men. Relating to more general interests, they will be less apt to come home to the feelings of the people; and, in proportion, less likely to inspire a habitual sense of obligation, and an active sentiment of attachment.

The reasoning on this head has been abundantly exemplified by the experience of all federal constitutions with which we are acquainted, and of all others which have borne the least analogy to them.

Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of *inferior* vassals or retainers, who occupied and cultivated that land upon the tenure of fealty, or obedience to the persons of whom they held it. Each principal vassal was a kind of sovereign within his particular demesnes. The consequences of this situation were a continual opposition to the authority of the sovereign, and frequent wars between the great barons, or chief feudatories themselves. The power of the head of the nation was commonly too weak either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal anarchy.

When the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered for the time the purposes of a more regular authority. But in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or states. In those instances in which the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependants. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common

people, were dreaded and detested by both; till mutual danger and mutual interest effected an union between them, fatal to the power of the aristocracy. Had the nobles, by a conduct of clemency and justice, preserved the fidelity and devotion of their retainers and followers, the contests between them and the prince must almost always have ended in their favour, and in the abridgment or subversion of the royal authority.

This is not an assertion founded merely in speculation or conjecture. Among other illustrations of its truth which might be cited, Scotland will furnish a cogent example. The spirit of clanship which was at an early day introduced into that kingdom, uniting the nobles and their dependants by ties equivalent to those of kindred, rendered the aristocracy a constant overmatch for the power of the monarch, till the incorporation with England subdued its fierce and ungovernable spirit, and reduced it within those rules of subordination, which a more rational and a more energetic system of civil polity had previously established in the latter kingdom.

The separate governments in a confederacy may aptly be compared with the feudal baronies; with this advantage in their favour, that from the reasons already explained, they will generally possess the confidence and good will of the people; and with so important a support, will be able effectually to oppose all encroachments of the national government. It will be well if they are not able to counteract its legitimate and necessary authority. The points of similitude consist in the rivalship of power, applicable to both, and in the CONCENTRATION of large portions of the strength of the community into particu-

lar DEPOSITORIES, in one case at the disposal of individuals; in the other case, at the disposal of political bodies.

A concise review of the events that have attended confederate governments, will further illustrate this important doctrine; an inattention to which has been the great source of our political mistakes, and has given our jealousy a direction to the wrong side. This review shall form the subject of some ensuing papers.

PUBLIUS.

NUMBER XVIII.

BY MR. HAMILTON AND MR. MADISON.

The Subject continued, with further Examples.

AMONG the confederacies of antiquity, the most considerable was that of the Grecian republics, associated under the Amphyctionic council. From the best transmitted accounts of this celebrated institution, it bore a very instructive analogy to the present confederation of the American states.

The members retained the character of independent and sovereign states, and had equal votes in the federal council. This council had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide, in the last resort, all controversies between the members; to fine the aggressing party; to employ the whole force of the

confederacy against the disobedient; to admit new members. The Amphyctions were the guardians of religion, and of the immense riches belonging to the temple of Delphos, where they had the right of jurisdiction in controversies between the inhabitants and those who came to consult the oracle. As a further provision for the efficacy of the federal powers, they took an oath mutually to defend and protect the united cities, to punish the violators of this oath, and to inflict vengeance on sacrilegious despoilers of the temple.

In theory, and upon paper, this apparatus of powers seems amply sufficient for all general purposes. In several material instances, they exceed the powers enumerated in the articles of confederation. The Amphyctions had in their hands the superstition of the times, one of the principal engines by which government was then maintained; they had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions.

Very different, nevertheless, was the experiment from the theory. The powers, like those of the present congress, were administered by deputies appointed wholly by the cities in their political capacities; and exercised over them in the same capacities. Hence the weakness, the disorders, and finally the destruction of the confederacy. The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest. Athens, as we learn from Demosthenes, was the arbiter of Greece seventy-three years. The Lacedemonians next governed it twenty-nine years; at a subsequent period, after the battle of Leuctra, the Thebans had their turn of domination.

It happened but too often, according to Plutarch that the deputies of the strongest cities awed and corrupted those of the weakest, and that judgment went in favour of the most powerful party.

Even in the midst of defensive and dangerous wars with Persia and Macedon, the members never acted in concert, and were, more or fewer of them, eternally the dupes, or the hirelings of the common enemy. The intervals of foreign war were filled up by domestic vicissitudes, convulsions, and carnage.

After the conclusion of the war with Xerxes, it appears that the Lacedemonians required that a number of the citizens should be turned out of the confederacy for the unfaithful part they had acted. The Athenians, finding that the Lacedemonians would lose fewer partizans by such a measure than themselves, and would become masters of the public deliberations, vigorously opposed and defeated the attempt. This piece of history proves at once the inefficiency of the union; the ambition and jealousy of its most powerful members, and the dependent and degraded condition of the rest. The smaller members, though intitled by the theory of their system to revolve in equal pride and majesty around the common center, had in fact become satellites of the orbs of primary magnitude.

Had the Greeks, says the abbé Milot, been as wise as they were courageous, they would have been admonished by experience of the necessity of a closer union, and would have availed themselves of the peace which followed their success against the Persian arms, to establish such a reformation. Instead of this obvious policy, Athens and Sparta, inflated with the victories and the glory they had ac-

quired, became first rivals, and then enemies; and did each other infinitely more mischief than they had suffered from Xerxes. Their mutual jealousies, fears, hatreds, and injuries, ended in the celebrated Pelopponesian war; which itself ended in the ruin and slavery of the Athenians, who had begun it.

As a weak government, when not at war, is ever agitated by internal dissentions; so these never fail to bring on fresh calamities from abroad. The Phocians having ploughed up some consecrated ground belonging to the temple of Apollo, the Amphyctionic council, according to the superstition of the age, imposed a fine on the sacrilegious offenders. The Phocians, being abetted by Athens and Sparta, refused to submit to the decree. The Thebans, with others of the cities, undertook to maintain the authority of the Amphyctions, and to avenge the violated god. The latter being the weaker party, invited the assistance of Philip of Macedon, who secretly fostered the contest. Philip gladly seized the opportunity of executing the designs he had long planned against the liberties of Greece. By his intrigues and bribes, he won over to his interests the popular leaders of several cities; by their influence and votes, gained admission into the Amphyctionic council; and by his arts and his arms, made himself master of the confederacy.

Such were the consequences of the fallacious principle, on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and persevered in her union, she would never have worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome.

The Achæan league, as it is called, was another

society of Grecian republics, which supplies us with valuable instruction.

The union here was far more intimate, and its organization much wiser, than in the preceding instance. It will accordingly appear, that though not exempt from a similar catastrophe, it by no means equally deserved it.

The cities composing this league, retained their municipal jurisdiction, appointed their own officers, and enjoyed a perfect equality. The senate in which they were represented, had the sole and exclusive right of peace and war; of sending and receiving ambassadors; of entering into treaties and alliances; of appointing a chief magistrate or pretor, as he was called; who commanded their armies; and who, with the advice and consent of ten of the senators, not only administered the government in the recess of the senate, but had a great share in its deliberation, when assembled. According to the primitive constitution, there were two pretors associated in the administration, but on trial, a single one was preferred.

It appears that the cities had all the same laws and customs, the same weights and measures, and the same money. But how far this effect proceeded from the authority of the federal council, is left in uncertainty. It is said only, that the cities were in a manner compelled to receive the same laws and usages. When Lacedemon was brought into the league, by Philopœmen, it was attended with an abolition of the institutions and laws of Lycurgus, and an adoption of those of the Achæans. The Amphyctionic confederacies, of which she had been a member, left her in the full exercise of her govern-

ment and her legislation. This circumstance alone proves a very material difference in the genius of the two systems.

It is much to be regretted that the monuments which remain of this curious political fabric are so imperfect. Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of federal government, than by any of the like experiments with which we are acquainted.

One important fact seems to be witnessed by all the historians who take notice of Achæan affairs. It is, that as well after the renovation of the league by Aratus, as before its dissolution by the arts of Macedon, there was infinitely more of moderation and justice in the administration of its government, and less of violence and sedition in the people, than were to be found in any of the cities exercising *singly* all the prerogatives of sovereignty. The abbé Mably, in his observations on Greece, says that the popular government, which was so tempestuous elsewhere, caused no disorders in the members of the Achæan republic, *because it was there tempered by the general authority and laws of the confederacy.*

We are not to conclude too hastily, however, that faction did not in a certain degree agitate the particular cities; much less, that a due subordination and harmony reigned in the general system. The contrary is sufficiently displayed in the vicissitudes and fate of the republic.

Whilst the Amphyctionic confederacy remained, that of the Achæans, which comprehended the less important cities only, made little figure on the theatre of Greece. When the former became a victim to Macedon, the latter was spared by the policy of

Philip and Alexander. Under the successors of these princes, however, a different policy prevailed. The arts of division were practised among the Achæans; each city was seduced into a separate interest; the union was dissolved. Some of the cities fell under the tyranny of Macedonian garrisons: others under that of usurpers springing out of their own confusions. Shame and oppression ere long awakened their love of liberty. A few cities re-united. Their example was followed by others, as opportunities were found of cutting off their tyrants. The league soon embraced almost the whole Peloponesus. Macedon saw its progress; but was hindered by internal dissentions from stopping it. All Greece caught the enthusiasm, and seemed ready to unite in one confederacy, when the jealousy and envy in Sparta and Athens, of the rising glory of the Achæans, threw a fatal damp on the enterprise. The dread of the Macedonian power induced the league to court the alliance of the kings of Egypt and Syria; who, as successors of Alexander, were rivals of the king of Macedon. This policy was defeated by Cleomenes, king of Sparta, who was led by his ambition to make an unprovoked attack on his neighbours the Achæans; and who, as an enemy to Macedon, had interest enough with the Egyptian and Syrian princes, to effect a breach of their engagements with the league. The Achæans were now reduced to the dilemma of submitting to Cleomenes, or of supplicating the aid of Macedon, its former oppressor. The latter expedient was adopted. The contest of the Greeks always afforded a pleasing opportunity to that powerful neighbour, of intermeddling in their affairs. A Macedonian army quickly appeared: Cleomenes was vanquished. The Achæ-

ans soon experienced, as often happens, that a victorious and powerful ally is but another name for a master. All that their most abject compliances could obtain from him, was a toleration of the exercise of their laws. Philip, who was now on the throne of Macedon, soon provoked, by his tyrannies, fresh combinations among the Greeks. The Achæans, though weakened by internal dissentions, and by the revolt of Messene, one of its members, being joined by the Etolians and Athenians, erected the standard of opposition. Finding themselves, though thus supported, unequal to the undertaking, they once more had recourse to the dangerous expedient of introducing the succour of foreign arms. The Romans, to whom the invitation was made, eagerly embraced it. Philip was conquered: Macedon subdued. A new crisis ensued to the league. Dissentions broke out among its members. These the Romans fostered. Callicrates, and other popular leaders, became mercenary instruments for inveigling their countrymen. The more effectually to nourish discord and disorder, the Romans had, to the astonishment of those who confided in their sincerity, already proclaimed universal liberty * throughout Greece. With the same insidious views, they now seduced the members from the league, by representing to their pride, the violation it committed on their sovereignty. By these arts, this union, the last hope of Greece, the last hope of ancient liberty, was torn into pieces; and such imbecility and distraction introduced, that the arms of Rome found little difficulty in completing the ruin which their arts had commenced.

* This was but another name more specious, for the independence of the members on the federal head.

The Achæans were cut to pieces; and Achaia loaded with chains, under which it is groaning at this hour.

I have thought it not superfluous to give the outlines of this important portion of history; both because it teaches more than one lesson; and because, as a supplement to the outlines of the Achæan constitution, it emphatically illustrates the tendency of federal bodies, rather to anarchy among the members, than to tyranny in the head.

PUBLIUS.

NUMBER XIX.

BY MR. HAMILTON AND MR. MADISON.

The Subject continued, with further Examples.

THE example of ancient confederacies, cited in my last paper, have not exhausted the source of experimental instruction on this subject. There are existing institutions, founded on a similar principle, which merit particular consideration. The first which presents itself is the Germanic body.

In the early ages of christianity, Germany was occupied by seven distinct nations, who had no common chief. The Franks, one of the number, having conquered the Gauls, established the kingdom which has taken its name from them. In the ninth century, Charlemagne, its warlike monarch, carried his victorious arms in every direction; and Germany became a part of his vast dominions. On the dis-

memberment which took place under his sons, this part was erected into a separate and independent empire. Charlemagne and his immediate descendants possessed the reality as well as the ensigns and dignity of imperial power. But the principal vassals, whose fefs had become hereditary, and who composed the national diets, which Charlemagne had not abolished, gradually threw off the yoke, and advanced to sovereign jurisdiction and independence. The force of imperial sovereignty was insufficient to restrain such powerful dependants; or to preserve the unity and tranquillity of the empire. The most furious private wars, accompanied with every species of calamity, were carried on between the different princes and states. The imperial authority, unable to maintain the public order, declined by degrees, till it was almost extinct in the anarchy which agitated the long interval between the death of the last emperor of the Suabian, and the accession of the first emperor of the Austrian lines. In the eleventh century, the emperors enjoyed full sovereignty: In the fifteenth, they had little more than the symbols and decorations of power.

Out of this feudal system, which has itself many of the important features of a confederacy, has grown the federal system, which constitutes the Germanic empire. Its powers are vested in a diet representing the component members of the confederacy; in the emperor, who is the executive magistrate, with a negative on the decrees of the diet; and in the imperial chamber and aulic council, two judiciary tribunals having supreme jurisdiction in controversies which concern the empire, or which happen among its members.

The diet possesses the general power of legislat-

ing for the empire; of making war and peace; contracting alliances; assessing quotas of troops and money; constructing fortresses; regulating coin; admitting new members; and subjecting disobedient members to the ban of the empire, by which the party is degraded from his sovereign rights, and his possessions forfeited. The members of the confederacy are expressly restricted from entering into compacts, prejudicial to the empire; from imposing tolls and duties on their mutual intercourse, without the consent of the emperor and diet; from altering the value of money; from doing injustice to one another; or from affording assistance or retreat to disturbers of the public peace. And the ban is denounced against such as shall violate any of these restrictions. The members of the diet, as such, are subject in all cases to be judged by the emperor and diet, and in their private capacities, by the aulic council and imperial chamber.

The prerogatives of the emperor are numerous. The most important of them are, his exclusive right to make propositions to the diet; to negative its resolutions; to name ambassadors; to confer dignities and titles; to fill vacant electorates; to found universities; to grant privileges not injurious to the states of the empire; to receive and apply the public revenues; and generally to watch over the public safety. In certain cases, the electors form a council to him. In quality of emperor, he possesses no territory within the empire; nor receives any revenue for his support. But his revenues and dominions, in other qualities, constitute him one of the most powerful princes in Europe.

From such a parade of constitutional powers, in the representatives and head of this confederacy, the

natural supposition would be, that it must form an exception to the general character which belongs to its kindred systems.—Nothing would be further from the reality. The fundamental principle, on which it rests, that the empire is a community of sovereigns; that the diet is a representation of sovereigns; and that the laws are addressed to sovereigns; render the empire a nerveless body; incapable of regulating its own members; insecure against external dangers; and agitated with unceasing fermentations in its own bowels.

The history of Germany, is a history of wars between the emperor and the princes and states; of wars among the princes and states themselves; of the licentiousness of the strong, and the oppression of the weak; of foreign intrusions, and foreign intrigues; of requisitions of men and money disregarded, or partially complied with; of attempts to enforce them, altogether abortive, or attended with slaughter and desolation, involving the innocent with the guilty; of general imbecility, confusion, and misery.

In the sixteenth century, the emperor, with one part of the empire on his side, was seen engaged against the other princes and states. In one of the conflicts, the emperor himself was put to flight, and very near being made prisoner by the electorate of Saxony. The late king of Prussia was more than once pitted against his imperial sovereign; and commonly proved an overmatch for him. Controversies and wars among the members themselves, have been so common, that the German annals are crowded with the bloody pages which describe them. Previous to the peace of Westphalia, Germany was desolated by a war of thirty years, in which the em-

peror, with one half of the empire, was on one side; and Sweden, with the other half, on the opposite side. Peace was at length negociated, and dictated by foreign powers; and the articles of it, to which foreign powers are parties, made a fundamental part of the Germanic constitution.

If the nation happens, on any emergency, to be more united by the necessity of self-defence, its situation is still deplorable. Military preparations must be preceded by so many tedious discussions, arising from the jealousies, pride, separate views, and clashing pretensions, of sovereign bodies, that before the diet can settle the arrangements, the enemy are in the field; and before the federal troops are ready to take it, are retiring into winter quarters.

The small body of national troops, which has been judged necessary in time of peace, is defectively kept up, badly paid, infected with local prejudices, and supported by irregular and disproportionate contributions to the treasury.

The impossibility of maintaining order, and dispensing justice among these sovereign subjects, produced the experiment of dividing the empire into nine or ten circles or districts; of giving them an interior organization; and of charging them with the military execution of the laws against delinquent and contumacious members. This experiment has only served to demonstrate more fully, the radical vice of the constitution. Each circle is the miniature picture of the deformities of this political monster. They either fail to execute their commissions, or they do it with all the devastation and carnage of civil war. Sometimes whole circles are defaulters; and then they increase the mischief which they were instituted to remedy.

We may form some judgment of this scheme of military coercion, from a sample given by Thuanus. In Donawerth, a free and imperial city, of the circle of Suabia, the abbé de St. Croix enjoyed certain immunities which had been reserved to him. In the exercise of these, on some public occasion, outrages were committed on him by the people of the city. The consequence was, that the city was put under the ban of the empire; and the duke of Bavaria, though director of another circle, obtained an appointment to enforce it. He soon appeared before the city, with a corps of ten thousand troops; and finding it a fit occasion, as he had secretly intended from the beginning, to revive an antiquated claim, on the pretext that his ancestors had suffered the place to be dismembered from his territory*; he took possession of it in his own name; disarmed and punished the inhabitants, and re-annexed the city to his domains.

It may be asked, perhaps, what has so long kept this disjointed machine from falling entirely to pieces? The answer is obvious. The weakness of most of the members, who are unwilling to expose themselves to the mercy of foreign powers; the weakness of most of the principal members, compared with the formidable powers all around them; the vast weight and influence which the emperor derives from his separate and hereditary dominions; and the interest he feels in preserving a system with which his family pride is connected, and which constitutes him the first prince in Europe; these causes support a feeble and precarious union; whilst

* Pseffel, Nouvel abreg. chronol. de l'hist. &c. d'Allemagne, says the pretext was to indemnify himself for the expense of the expedition.

the repellent quality, incident to the nature of sovereignty, and which time continually strengthens, prevents any reform whatever, founded on a proper consolidation. Nor is it to be imagined, if this obstacle could be surmounted, that the neighbouring powers would suffer a revolution to take place, which would give to the empire the force and pre-eminence to which it is intitled. Foreign nations have long considered themselves as interested in the changes made by events in this constitution; and have, on various occasions, betrayed their policy of perpetuating its anarchy and weakness.

If more direct examples were wanting, Poland, as a government over local sovereigns, might not improperly be taken notice of. Nor could any proof, more striking, be given of the calamities flowing from such institutions.—Equally unfit for self-government, and self-defence, it has long been at the mercy of its powerful neighbours; who have lately had the mercy to disburden it of one third of its people and territories.

The connexion among the Swiss cantons, scarcely amounts to a confederacy; though it is sometimes cited as an instance of the stability of such institutions.

They have no common treasury; no common troops even in war; no common coin; no common judicatory, nor any other common mark of sovereignty.

They are kept together by the peculiarity of their topographical position; by their individual weakness and insignificancy; by the fear of powerful neighbours, to one of which they were formerly subject; by the few sources of contention among a people of such simple and homogeneous manners;

by their joint interest in their dependent possessions; by the mutual aid they stand in need of, for suppressing insurrections and rebellions; an aid expressly stipulated, and often required and afforded; and by the necessity of some regular and permanent provision for accommodating disputes among the cantons. The provision is, that the parties at variance shall each choose four judges out of the neutral cantons, who, in case of disagreement, choose an umpire. This tribunal, under an oath of impartiality, pronounces definitive sentence, which all the cantons are bound to enforce. The competency of this regulation may be estimated by a clause in their treaty of 1683, with Victor Armadeus of Savoy; in which he obliges himself to interpose as mediator in disputes between the cantons; and to employ force, if necessary, against the contumacious party.

So far as the peculiarity of their case will admit of comparison with that of the United States, it serves to confirm the principles intended to be established. Whatever efficacy the union may have had in ordinary cases, it appears that the moment a cause of difference sprang up, capable of trying its strength, it failed. The controversies on the subject of religion, which in three instances have kindled violent and bloody contests, may be said in fact to have severed the league. The Protestant and Catholic cantons, have since had their separate diets; where all the most important concerns are adjusted, and which have left the general diet little other business than to take care of the common bailages.

That separation had another consequence, which merits attention. It produced opposite alliances with foreign powers; of Bern, as the head of the Protestant association, with the United Provinces;

and of Luzerne, as the head of the Catholic association, with France.

PUBLIUS.

NUMBER XX.

BY MR. HAMILTON AND MR. MADISON.

The same Subject continued, with further Examples.

THE United Netherlands are a confederacy of republics, or rather of aristocracies, of a very remarkable texture; yet confirming all the lessons derived from those which we have already reviewed.

The union is composed of seven co-equal and sovereign states, and each state or province is a composition of equal and independent cities. In all important cases, not only the provinces, but the cities, must be unanimous.

The sovereignty of the union is represented by the states general, consisting usually of about fifty deputies appointed by the provinces. They hold their seats, some for life, some for six, three, and one years. From two provinces they continue in appointment during pleasure.

The states general have authority to enter into treaties and alliances; to make war and peace; to raise armies and equip fleets; to ascertain quotas and demand contributions. In all these cases, however, unanimity and the sanction of their constituents are requisite. They have authority to appoint and receive ambassadors; to execute treaties and alli-

ances already formed; to provide for the collection of duties on imports and exports; to regulate the mint, with a saving to the provincial rights; to govern as sovereigns the dependent territories. The provinces are restrained, unless with the general consent, from entering into foreign treaties; from establishing imposts injurious to others, or charging their neighbours with higher duties than their own subjects. A council of state, a chamber of accounts, with five colleges of admiralty, aid and fortify the federal administration.

The executive magistrate of the union is the stadtholder, who is now an hereditary prince. His principal weight and influence in the republic are derived from his independent title; from his great patrimonial estates; from his family connexions with some of the chief potentates of Europe; and more than all, perhaps, from his being stadtholder in the several provinces, as well as for the union, in which provincial quality, he has the appointment of town magistrates under certain regulations, executes provincial decrees, presides when he pleases in the provincial tribunals; and has throughout the power of pardon.

As stadtholder of the union, he has, however, considerable prerogatives.

In his political capacity, he has authority to settle disputes between the provinces, when other methods fail; to assist at the deliberations of the states general, and at their particular conferences; to give audience to foreign ambassadors, and to keep agents for his particular affairs at foreign courts.

In his military capacity, he commands the federal troops; provides for garrisons, and in general regulates military affairs; disposes of all appointments from co-

lonels to ensigns, and of the governments and posts of fortified towns.

In his marine capacity, he is admiral general, and superintends and directs every thing relative to naval forces, and other naval affairs; presides in the admiralties in person or by proxy; appoints lieutenant-admirals and other officers; and establishes councils of war, whose sentences are not executed till he approves them.

His revenue, exclusive of his private income, amounts to 300,000 florins. The standing army which he commands consists of about 40,000 men.

Such is the nature of the celebrated Belgic confederacy, as delineated on parchment. What are the characters which practice has stampt upon it? Imbecility in the government; discord among the provinces; foreign influence and indignities; a precarious existence in peace, and peculiar calamities from war.

It was long ago remarked by Grotius, that nothing but the hatred of his countrymen to the house of Austria, kept them from being ruined by the vices of their constitution.

The union of Utrecht, says another respectable writer, reposes an authority in the states general, seemingly sufficient to secure harmony, but the jealousy in each province renders the practice very different from the theory.

The same instrument, says another, obliges each province to levy certain contributions; but this article never could, and probably never will, be executed; because the inland provinces, who have little commerce, cannot pay an equal quota.

In matters of contribution, it is the practice to waive the articles of the constitution. The danger

of delay obliges the consenting provinces to furnish their quotas, without waiting for the others; and then to obtain reimbursement from the others, by deputations, which are frequent, or otherwise, as they can. The great wealth and influence of the province of Holland, enable her to effect both these purposes.

It has more than once happened, that the deficiencies have been ultimately to be collected at the point of the bayonet; a thing practicable, though dreadful, in a confederacy, where one of the members exceeds in force all the rest; and where several of them are too small to meditate resistance: but utterly impracticable in one composed of members, several of which are equal to each other in strength and resources, and equal singly to a vigorous and persevering defence.

Foreign ministers, says Sir William Temple, who was himself a foreign minister, elude matters taken *ad referendum*, by tampering with the provinces and cities. In 1726, the treaty of Hanover was delayed by these means a whole year. Instances of a like nature are numerous and notorious.

In critical emergencies, the states general are often compelled to overleap their constitutional bounds. In 1688, they concluded a treaty of themselves, at the risk of their heads. The treaty of Westphalia, in 1648, by which their independence was formally and finally recognized, was concluded without the consent of Zealand. Even as recently as the last treaty of peace with Great-Britain, the constitutional principle of unanimity was departed from. A weak constitution must necessarily terminate in dissolution, for want of proper powers, or from the usurpation of powers requisite for the public safety. Whe-

ther the usurpation, when once begun, will stop at the salutary point, or go forward to the dangerous extreme, must depend on the contingencies of the moment. Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities.

Notwithstanding the calamities produced by the stadtholdership, it has been supposed, that without his influence in the individual provinces, the causes of anarchy manifest in the confederacy, would long ago have dissolved it. "Under such a government, "says the abbé Mably, the union could never "have subsisted, if the provinces had not a spring "within themselves, capable of quickening their "tardiness, and compelling them to the same way "of thinking. This spring is the stadtholder." It is remarked by Sir William Temple, "that in the "intermissions of the stadtholdership, Holland, by "her riches and her authority, which drew the "others into a sort of dependence, supplied the "place."

These are not the only circumstances which have controlled the tendency to anarchy and dissolution. The surrounding powers impose an absolute necessity of union to a certain degree, at the same time that they nourish, by their intrigues, the constitutional vices, which keep the republic in some measure always at their mercy.

The true patriots have long bewailed the fatal operation of these vices, and have made no less than four regular experiments by *extraordinary assemblies*, convened for the special purpose to apply a remedy. As many times has their laudable zeal found

it impossible to *unite the public councils* in reforming the known, the acknowledged, the fatal evils of the existing constitution. Let us pause, my fellow-citizens, for one moment, over this melancholy and monitory lesson of history; and with the tear that drops for the calamities brought on mankind by their adverse opinions and selfish passions, let our gratitude mingle an ejaculation to Heaven, for the propitious concord which has distinguished the consultations for our political happiness.

A design was also conceived of establishing a general tax, to be administered by the federal authority. This also had its adversaries, and failed.

This unhappy people seem to be now suffering, from popular convulsions, from dissentions among the states, and from the actual invasion of foreign arms, the crisis of their destiny. All nations have their eyes fixed on the awful spectacle. The first wish prompted by humanity is, that this severe trial may issue in such a revolution of their government, as will establish their union, and render it the parent of tranquillity, freedom, and happiness: The next, that the asylum under which, we trust, the enjoyment of these blessings will speedily be secured in this country, may receive and console them for the catastrophe of their own.

I make no apology for having dwelt so long on the contemplation of these federal precedents. Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth which it unequivocally pronounces in the present case, is, that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals; as it is a solecism in the

ory, so in practice, it is subversive of the order and ends of civil polity, by substituting *violence* in the place of *law*, or the destructive *coercion* of the *sword*, in the place of the mild and salutary *coercion* of the *magistracy*.

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NUMBER XXI.

BY MR. HAMILTON.

Further Defects of the present Constitution.

HAVING in the three last numbers taken a summary review of the principal circumstances and events, which depict the genius and fate of other confederate governments; I shall now proceed in the enumeration of the most important of those defects, which have hitherto disappointed our hopes from the system established among ourselves. To form a safe and satisfactory judgment of the proper remedy, it is absolutely necessary that we should be well acquainted with the extent and malignity of the disease.

The next most palpable defect of the existing confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no power to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional means. There is no express delegation of authority to them to use force against delinquent members; and if such a right should be

ascribed to the federal head, as resulting from the nature of the social compact between the states, it must be by inference and construction, in the face of that part of the second article, by which it is declared, "that each state shall retain every power, "jurisdiction, and right, not *expressly* delegated to "the United States in Congress assembled." The want of such a right involves, no doubt, a striking absurdity; but we are reduced to the dilemma, either of supposing that deficiency, preposterous as it may seem, or of contravening or explaining away a provision, which has been of late a repeated theme of the eulogies of those who oppose the new constitution; and the omission of which, in that plan, has been the subject of much plausible animadversion, and severe criticism. If we are unwilling to impair the force of this applauded provision, we shall be obliged to conclude, that the United States afford the extraordinary spectacle of a government, destitute even of the shadow of constitutional power, to enforce the execution of its own laws. It will appear, from the specimens which have been cited, that the American confederacy, in this particular, stands discriminated from every other institution of a similar kind, and exhibits a new and unexampled phenomenon in the political world.

The want of a mutual guarantee of the state governments, is another capital imperfection in the federal plan. There is nothing of this kind declared in the articles that compose it: and to imply a tacit guarantee from considerations of utility, would be a still more flagrant departure from the clause which has been mentioned, than to imply a tacit power of coercion, from the like consideration. The want of a guarantee, though it might in its

consequences endanger the union, does not so immediately attack its existence, as the want of a constitutional sanction to its laws.

Without a guarantee, the assistance to be derived from the union, in repelling those domestic dangers, which may sometimes threaten the existence of the state constitutions, must be renounced. Usurpation may rear its crest in each state, and trample upon the liberties of the people; while the national government could legally do nothing more than behold its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while no succour could constitutionally be afforded by the union to the friends and supporters of the government. The tempestuous situation, from which Massachusetts has scarcely emerged, evinces, that dangers of this kind are not merely speculative. Who can determine what might have been the issue of her late convulsions, if the malcontents had been headed by a Cæsar or by a Cromwell? Who can predict what effect a despotism, established in Massachusetts, would have upon the liberties of New-Hampshire or Rhode-Island; of Connecticut or New-York?

The inordinate pride of state importance, has suggested to some minds an objection to the principle of a guarantee in the federal government; as involving an officious interference in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union; and can only flow from a misapprehension of the nature of the provision itself. It could be no impediment to reforms of the state constitutions by a majority of the people in a legal and peaceable mode. This right would remain un-

diminished. The guarantee could only operate against changes to be effected by violence. Towards the prevention of calamities of this kind, too many checks cannot be provided. The peace of society, and the stability of government, depend absolutely on the efficacy of the precautions adopted on this head. Where the whole power of the government is in the hands of the people, there is the less pretence for the use of violent remedies, in partial or occasional distempers of the state. The natural cure for an ill administration, in a popular or representative constitution, is, a change of men. A guarantee by the national authority, would be as much directed against the usurpations of rulers, as against the ferments and outrages of faction and sedition in the community.

The principle of regulating the contributions of the states to the common treasury by QUOTAS, is another fundamental error in the confederation. Its repugnancy to an adequate supply of the national exigencies, has been already pointed out, and has sufficiently appeared from the trial which has been made of it. I speak of it now solely, with a view to equality among the states. Those who have been accustomed to contemplate the circumstances, which produce and constitute national wealth, must be satisfied that there is no common standard, or barometer, by which the degrees of it can be ascertained. Neither the value of lands, nor the numbers of the people, which have been successively proposed as the rule of state contributions, has any pretension to being a just representative. If we compare the wealth of the United Netherlands with that of Russia or Germany, or even of France; and if we at the same time compare the total value of the lands, and

the aggregate population of the contracted territory of that republic, with the total value of the lands, and the aggregate population of the immense regions of either of those kingdoms, we shall at once discover, that there is no comparison between the proportion of either of these two objects, and that of the relative wealth of those nations. If the like parallel were to be run between several of the American states, it would furnish a like result. Let Virginia be contrasted with North-Carolina, Pennsylvania with Connecticut, or Maryland with New-Jersey, and we shall be convinced that the respective abilities of those states, in relation to revenue, bear little or no analogy to their comparative stock in lands, or to their comparative population. The position may be equally illustrated, by a similar process between the counties of the same state. No man acquainted with the state of New-York will doubt, that the active wealth of King's county bears a much greater proportion to that of Montgomery, than it would appear to do, if we should take either the total value of the lands, or the total numbers of the people, as a criterion.

The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate; the nature of the productions; the nature of the government; the genius of the citizens; the degree of information they possess; the state of commerce, of arts, of industry; these circumstances, and many more too complex, minute, or adventitious, to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different countries. The consequence clearly is, that there can be no common measure of national wealth; and of course, no general or stationary rule,

by which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a confederacy, by any such rule, cannot fail to be productive of glaring inequality, and extreme oppression.

This inequality would of itself be sufficient in America to work the eventual destruction of the union, if any mode of enforcing a compliance with its requisitions could be devised. The suffering states would not long consent to remain associated upon a principle which distributed the public burthens with so unequal a hand; and which was calculated to impoverish and oppress the citizens of some states, while those of others would scarcely be conscious of the small proportion of the weight they were required to sustain. This, however, is an evil inseparable from the principle of quotas and requisitions.

There is no method of steering clear of this inconvenience, but by authorizing the national government to raise its own revenues in its own way. Imposts, excises, and in general all duties upon articles of consumption, may be compared to a fluid, which will in time find its level with the means of paying them. The amount to be contributed by each citizen, will in a degree be at his own option, and can be regulated by an attention to his resources. The rich may be extravagant, the poor can be frugal. And private oppression may always be avoided, by a judicious selection of objects proper for such impositions. If inequalities should arise in some states from duties on particular objects, these will, in all probability, be counterbalanced by proportional inequalities in other states, from the duties on other objects. In the course of time and things, an equili-

brium, as far as it is attainable, in so complicated a subject, will be established every where. Or if inequalities should still exist, they would neither be so great in their degree, so uniform in their operation, nor so odious in their appearance, as those which would necessarily spring from quotas, upon any scale that can possibly be devised.

It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed—that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that "in political arithmetic, two "and two do not always make four." If duties are too high, they lessen the consumption—the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds.

This forms a complete barrier against any material oppression of the citizens, by taxes of this class, and is itself a natural limitation of the power of imposing them.

Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to lands and buildings, may admit of a rule of apportionment. Either the value of land, or the number of the people, may serve as a standard. The state of agriculture, and the populousness of a country, are considered as having a near relation to each other. And as a rule for the purpose intended, numbers in the view of simplicity and certainty, are intitled to a preference. In every

country it is an Herculean task, to obtain a valuation of the land; in a country imperfectly settled, and progressive in improvement, the difficulties are increased almost to impracticability. The expense of an accurate valuation, is in all situations a formidable objection. In a branch of taxation where no limits to the discretion of the government are to be found in the nature of the thing, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave that discretion altogether at large.

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NUMBER XXII.

BY MR. HAMILTON.

The same Subject continued and concluded.

IN addition to the defects of the existing federal system, enumerated in the last number, there are others of not less importance, which concur in rendering that system unfit for the administration of the affairs of the union.

The want of a power to regulate commerce, is by all parties allowed to be of the number. The utility of such a power has been anticipated under the first head of our inquiries; and for this reason, as well as from the universal conviction entertained upon the subject, little need be added in this place. It is indeed evident, on the most superficial view, that there

is no object, either as it respects the interests of trade or finance, that more strongly demands a federal superintendance. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers; and has given occasions of dissatisfaction between the states. No nation acquainted with the nature of our political association would be unwise enough to enter into stipulations with the United States, conceding on their part, privileges of importance, while they were apprised that the engagements on the part of the union, might at any moment be violated by its members; and while they found, from experience, that they might enjoy every advantage they desired in our markets, without granting us any return, but such as their momentary convenience might suggest. It is not, therefore, to be wondered at, that Mr. Jenkinson, in ushering into the house of commons a bill for regulating the temporary intercourse between the two countries, should preface its introduction by a declaration, that similar provisions in former bills, had been found to answer every purpose to the commerce of Great-Britain, and that it would be prudent to persist in the plan, until it should appear whether the American government was likely or not to acquire greater consistency*.

Several states have endeavoured, by separate prohibitions, restrictions, and exclusions, to influence the conduct of that kingdom in this particular; but the want of concert, arising from the want of a general authority, and from clashing and dissimilar views in the states, has hitherto frustrated every experiment of the kind; and will continue to do so, as

* This, as nearly as I can recollect, was the sense of this speech, on introducing the last bill.

long as the same obstacles to an uniformity of measures continue to exist.

The interfering and unneighbourly regulations of some states, contrary to the true spirit of the union, have, in different instances, given just cause of umbrage and complaint to others; and it is to be feared, that examples of this nature, if not restrained by a national control, would be multiplied and extended, till they became not less serious sources of animosity and discord, than injurious impediments to the intercourse between the different parts of the confederacy. "The commerce of the German empire*, is "in continual trammels, from the multiplicity of the "duties which the several princes and states exact "upon the merchandises passing through their territories; by means of which, the fine streams and "navigable rivers with which Germany is so happily watered, are rendered almost useless."—Though the genius of the people of this country might never permit this description to be strictly applicable to us, yet we may reasonably expect, from the gradual conflicts of state regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens.

The power of raising armies, by the most obvious construction of the articles of the confederation, is merely a power of making requisitions upon the states, for quotas of men. This practice, in the course of the late war, was found replete with obstructions to a vigorous, and to an economical system of defence. It gave birth to a competition between the states, which created a kind of auction for men.

* Encyclopedia, article Empire.

In order to furnish the quotas required of them, they outbid each other, till bounties grew to an enormous and insupportable size. The hope of a still further increase, afforded an inducement to those who were disposed to serve, to procrastinate their enlistment; and disinclined them from engaging for any considerable periods. Hence slow and scanty levies of men, in the most critical emergencies of our affairs—short enlistments at an unparalleled expense—continual fluctuations in the troops, ruinous to their discipline, and subjecting the public safety frequently to the perilous crisis of a disbanded army. Hence, also, those oppressive expedients for raising men, which were, upon several occasions, practised, and which nothing but the enthusiasm of liberty would have induced the people to endure.

This method of raising troops, is not more unfriendly to economy and vigour, than it is to an equal distribution of the burthen. The states near the seat of war, influenced by motives of self-preservation, made efforts to furnish their quotas, which even exceeded their abilities, while those at a distance from danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate pressure of this inequality, was not, in this case, as in that of the contributions of money, alleviated by the hope of a final liquidation. The states which did not pay their proportions of money, might at least be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies of men. We shall not, however, see much reason to regret the want of this hope, when we consider how little prospect there is, that the most delinquent states ever will be able to make compensation for their pecuniary failures. The system of

quotas and requisitions, whether it be applied to men or money, is, in every view, a system of imbecility in the union, and of inequality and injustice among the members.

The right of equal suffrage among the states, is another exceptionable part of the confederation. Every idea of proportion, and every rule of fair representation, conspire to condemn a principle, which gives to Rhode-Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New-York; and to Delaware, an equal voice in the national deliberations with Pennsylvania, or Virginia, or North-Carolina. Its operation contradicts that fundamental maxim of republican government, which requires that the sense of the majority should prevail. Sophistry may reply, that sovereigns are equal, and that a majority of the votes of the states will be a majority of confederated America. But this kind of logical legerdemain, will never counteract the plain suggestions of justice and common sense. It may happen, that this majority of states is a small minority of the people of America*; and two-thirds of the people of America could not long be persuaded, upon the credit of artificial distinctions and syllogistic subtleties, to submit their interests to the management and disposal of one-third. The larger states would, after a while, revolt from the idea of receiving the law from the smaller. To acquiesce in such a privation of their due importance in the political scale, would be, not merely to be insensible to the love of power, but even to sacrifice the desire of equality. It is

* New-Hampshire, Rhode-Island, New-Jersey, Delaware, Georgia, South-Carolina, and Maryland, are a majority of the whole number of the States, but they do not contain one-third of the people.

neither rational to expect the first, nor just to require the last: Considering how peculiarly the safety and welfare of the smaller states depend on union, they ought readily to renounce a pretension, which, if not relinquished, would prove fatal to its duration.

It may be objected to this, that not seven, but nine states, or two-thirds of the whole number, must consent to the most important resolutions; and it may be thence inferred, that nine states would always comprehend a majority of the inhabitants of the union. But this does not obviate the impropriety of an equal vote, between states of the most unequal dimensions and populousness; nor is the inference accurate in point of fact; for we can enumerate nine states, which contain less than a majority of the people *; and it is constitutionally possible, that these nine may give the vote. Besides, there are matters of considerable moment determinable by a bare majority; and there are others, concerning which doubts have been entertained, which, if interpreted in favour of the sufficiency of a vote of seven states, would extend its operation to interests of the first magnitude. In addition to this, it is to be observed, that there is a probability of an increase in the number of states, and no provision for a proportional augmentation of the ratio of votes.

But this is not all; what, at first sight, may seem a remedy, is, in reality, a poison. To give a minority a negative upon the majority, which is always the case where more than a majority is requisite to a decision, is, in its tendency, to subject the sense of

* Add New-York and Connecticut to the foregoing seven, and they will still be less than a majority.

the greater number to that of the lesser. Congress, from the non-attendance of a few states, have been frequently in the situation of a Polish diet, where a single VETO has been sufficient to put a stop to all their movements. A sixtieth part of the union, which is about the proportion of Delaware and Rhode-Island, has several times been able to oppose an entire bar to its operations. This is one of those refinements, which, in practice, has an effect the reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of something approaching towards it, has been founded upon a supposition that it would contribute to security. But its real operation is, to embarrass the administration, to destroy the energy of government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority. In those emergencies of a nation, in which the goodness or badness, the weakness or strength of its government, is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number, will over-rule that of the greater, and give a tone to the national proceedings. Hence tedious delays; continual negociation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even fortunate when such compromises can take place: For, upon some occasions, things will not admit of accommodation; and then the

measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savour of weakness; sometimes border upon anarchy.

It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption, as well as to domestic faction, than that which permits the sense of the majority to decide; though the contrary of this has been presumed. The mistake has proceeded from not attending with due care to the mischiefs that may be occasioned, by obstructing the progress of government at certain critical seasons. When the concurrence of a large number is required by the constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely *to be done;* but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering that which it is necessary to do, and of keeping affairs in the same unfavourable posture in which they may happen to stand at particular periods.

Suppose, for instance, we were engaged in a war, in conjunction with one foreign nation, against another. Suppose the necessity of our situation demanded peace, and that the interest or ambition of our ally led him to seek the prosecution of the war, with views that might justify us in making separate terms. In such a state of things, this ally of ours would evidently find it much easier by his bribes and his intrigues, to tie up the hands of government from making peace, where two-thirds of all the votes were requisite to that object, than where a simple majority would suffice. In the first case, he would

have to corrupt a smaller, in the last a greater number. Upon the same principle, it would be much easier for a foreign power with which we were at war, to perplex our councils and embarrass our exertions. And in a commercial view, we may be subjected to similar inconveniences. A nation with which we might have a treaty of commerce, could with much greater facility prevent our forming a connexion with her competitor in trade; though such a connexion should be ever so beneficial to ourselves.

Evils of this description ought not to be regarded as imaginary. One of the weak sides of republics, among their numerous advantages, is, that they afford too easy an inlet to foreign corruption. An hereditary monarch, though often disposed to sacrifice his subjects to his ambition, has so great a personal interest in the government, and in the external glory of the nation, that it is not easy for a foreign power to give him an equivalent, for what he would sacrifice by treachery to the state. The world has accordingly been witness to few examples of this species of royal prostitution, though there have been abundant specimens of every other kind.

In republics, persons elevated from the mass of the community, by the suffrages of their fellow-citizens, to stations of great pre-eminence and power, may find compensations for betraying their trust, which to any but minds actuated by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is, that history furnishes us with so many mortifying examples of the prevalency of foreign corruption in republican governments. How much this contributed to the ruin

of the ancient commonwealths, has been already disclosed. It is well known, that the deputies of the United Provinces have, in various instances, been purchased by the emissaries of the neighbouring kingdoms. The earl of Chesterfield, if my memory serves me right, in a letter to his court, intimates that his success in an important negociation, must depend on his obtaining a major's commission for one of those deputies. And in Sweden, the rival parties were alternately bought by France and England, in so barefaced and notorious a manner, that it excited universal disgust in the nation, and was a principal cause that the most limited monarch in Europe, in a single day, without tumult, violence, or opposition, became one of the most absolute and uncontrolled.

A circumstance which crowns the defects of the confederation, remains yet to be mentioned—the want of a judiciary power. Laws are a dead letter, without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. To produce uniformity in these determinations, they ought to be submitted in the last resort to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. These ingredients are both indispensable. If there is in each state a court of final jurisdiction, there may be as many different final determinations on the same point, as there are courts. There are endless diversities in the opinions of men. We often see not only different courts, but the judges

of the same court, differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort, an uniform rule of civil justice.

This is the more necessary, where the frame of the government is so compounded, that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if the particular tribunals are invested with a right of ultimate decision, besides the contradictions to be expected from difference of opinion, there will be much to fear from the bias of local views and prejudices, and from the interference of local regulations. As often as such an interference should happen, there would be reason to apprehend, that the provisions of the particular laws might be preferred to those of the general laws, from the deference with which men in office naturally look up to that authority to which they owe their official existence. The treaties of the United States, under the present constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which these are composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honour, their

happiness, their safety, on so precarious a foundation?

In this review of the confederation, I have confined myself to the exhibition of its most material defects; passing over those imperfections in its details, by which even a considerable part of the power intended to be conferred upon it, has been in a great measure rendered abortive. It must be by this time evident to all men of reflection, who are either free from erroneous prepossessions, or can divest themselves of them, that it is a system so radically vicious and unsound, as to admit not of amendment, but by an entire change in its leading features and characters.

The organization of congress, is itself utterly improper for the exercise of those powers, which are necessary to be deposited in the union. A single assembly may be a proper receptacle of those slender, or rather fettered authorities, which have been heretofore delegated to the federal head; but it would be inconsistent with all the principles of good government, to intrust it with those additional powers which even the moderate and more rational adversaries of the proposed constitution admit, ought to reside in the United States. If that plan should not be adopted; and if the necessity of union should be able to withstand the ambitious aims of those men, who may indulge magnificent schemes of personal aggrandizement from its dissolution; the probability would be, that we should run into the project of conferring supplementary powers upon congress, as they are now constituted. And either the machine, from the intrinsic feebleness of its structure, will moulder into pieces, in spite of our ill-judged efforts to prop it; or by successive augmentations of its

force and energy, as necessity might prompt, we shall finally accumulate in a single body, all the most important prerogatives of sovereignty; and thus entail upon our posterity, one of the most execrable forms of government, that human infatuation ever contrived. Thus we should create in reality, that very tyranny, which the adversaries of the new constitution, either are, or affect to be solicitous to avert.

It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers; and has, in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a state, it has been contended, that the same authority might repeal the law by which it was ratified. However gross a heresy it may be, to maintain that a *party* to a *compact* has a right to revoke that *compact*, the doctrine itself has had respectable advocates. The possibility of a question of this nature, proves the necessity of laying the foundations of our national government deeper, than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority.

PUBLIUS.

NUMBER XXIII.

BY MR. HAMILTON.

The Necessity of a Government, at least equally energetic with the one proposed.

THE necessity of a constitution, at least equally energetic with the one proposed, to the preservation of the union, is the point, at the examination of which we are now arrived.

This inquiry will naturally divide itself into three branches: The objects to be provided for by a federal government: The quantity of power necessary to the accomplishment of those objects: The persons upon whom that power ought to operate. Its distribution and organization, will more properly claim our attention under the succeeding head.

The principal purposes to be answered by union, are these: The common defence of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations, and between the states; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the care of the common defence are these: To raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation; because it is impossible to foresee or to define the extent and variety of national exigen-

cies, and the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite; and for this reason, no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils, which are appointed to preside over the common defence.

This is one of those truths, which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms, as simple as they are universal—the *means* ought to be proportioned to the *end;* the persons from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.

Whether there ought to be a federal government intrusted with the care of the common defence, is a question, in the first instance, open to discussion; but the moment it is decided in the affirmative, it will follow, that that government ought to be clothed with all the powers requisite to the complete execution of its trust. And unless it can be shown, that the circumstances which may affect the public safety, are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted as a necessary consequence, that there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy; that is, in any matter

essential to the *formation*, *direction*, or *support* of the NATIONAL FORCES.

Defective as the present confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the states, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was, that the United States should command whatever resources were by them judged requisite to the "common defence and general welfare." It was presumed, that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has however demonstrated, that this expectation was ill founded and illusory; and the observations made under the last head will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system. That if we are in earnest about giving the union energy and duration, we must abandon the vain project of legislating upon the states in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the union ought to be invested with full power to

levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised in other governments.

If the circumstances of our country are such, as to demand a compound, instead of a simple; a confederate, instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power: allowing to each, the most ample authority for fulfilling THOSE which may be committed to its charge. Shall the union be constituted the guardian of the common safety? Are fleets, and armies, and revenues, necessary to this purpose? The government of the union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice, between the citizens of the same state, the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power, commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigour and success.

Who so likely to make suitable provisions for the public defence, as that body to which the guardian-

ship of the public safety is confided? Which, as the center of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the states, can alone establish uniformity and concert in the plans and measures, by which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defence, and leaving in the state governments the *effective* powers, by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burthens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution, which we have just achieved?

Every view we may take of the subject as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner as to admit of its being safely vested with the requisite powers. If any plan, which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description, it ought to be re-

jected. A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan, promulgated by the convention, would have given a better impression of their candour, if they had confined themselves to showing that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils, about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed, to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government, in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face, of confiding to a government the direction of the most essential national concerns, without daring to trust it with the authorities which are indispensable to their proper and efficient management. Let us not at-

tempt to reconcile contradictions, but firmly embrace a rational alternative.

I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself that the observations, which have been made in the course of these papers, have served to place the reverse of that position in as clear a light as any matter, still in the womb of time and experience, is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favour of an energetic government; for any other can certainly never preserve the union of so large an empire. If we embrace, as the standard of our political creed, the tenets of those who oppose the adoption of the proposed constitution, we cannot fail to verify the gloomy doctrines, which predict the impracticability of a national system, pervading the entire limits of the present confederacy.

PUBLIUS.

NUMBER XXIV.

BY MR. HAMILTON.

The Subject continued, with an Answer to an Objection concerning standing Armies.

To the powers proposed to be conferred upon the federal government, in respect to the creation and

direction of the national forces, I have met with but one specific objection; which is, that proper provision has not been made against the existence of standing armies in time of peace: An objection which I shall now endeavour to show, rests on weak and unsubstantial foundations.

It has indeed been brought forward in the most vague and general form, supported only by bold assertions, without the appearance of argument; without even the sanction of theoretical opinions, in contradiction to the practice of other free nations, and to the general sense of America, as expressed in most of the existing consitutions. The propriety of this remark will appear, the moment it is recollected that the objection under consideration turns upon a supposed necessity of restraining the LEGISLATIVE authority of the nation, in the article of military establishments; a principle unheard of, except in one or two of our state constitutions, and rejected in all the rest.

A stranger to our politics, who was to read our newspapers at the present juncture, without having previously inspected the plan reported by the convention, would be naturally led to one of two conclusions: either that it contained a positive injunction, that standing armies should be kept up in time of peace; or that it vested in the EXECUTIVE the whole power of levying troops, without subjecting his discretion in any shape to the control of the legislature.

If he came afterwards to peruse the plan itself, he would be surprised to discover, that neither the one nor the other was the case; that the whole power of raising armies was lodged in the *legislature*, not in the *executive*; that this legislature was to be

a popular body, consisting of the representatives of the people periodically elected; and that instead of the provision he had supposed in favour of standing armies, there was to be found in respect to this object, an important qualification even of the legislative discretion, in that clause which forbids the appropriation of money for the support of an army for any longer period than two years: A precaution which, upon a nearer view of it, will appear to be a great and real security against military establishments without evident necessity.

Disappointed in his first surmise, the person I have supposed would be apt to pursue his conjectures a little further. He would naturally say to himself, it is impossible that all this vehement and pathetic declamation can be without some colourable pretext. It must needs be that this people, so jealous of their liberties, have, in all the preceding models of the constitutions which they have established, inserted the most precise and rigid precautions on this point, the omission of which in the new plan, has given birth to all this apprehension and clamour.

If, under this impression, he proceeded to pass in review the several state constitutions, how great would be his disappointment to find that *two only* of them * contained an interdiction of standing armies

* This statement of the matter is taken from the printed collections of state constitutions. Pennsylvania and North-Carolina, are the two which contain the interdiction in these words: "As "standing armies in time of peace are dangerous to liberty, "THEY OUGHT NOT to be kept up." This is, in truth, rather a CAUTION than a PROHIBITION. New-Hampshire, Massachusetts, Delaware, and Maryland, have in each of their bills of rights a clause to this effect: "Standing armies are dangerous to "liberty, and ought not to be raised or kept up WITHOUT THE

in time of peace; that the other eleven had either observed a profound silence on the subject, or had in express terms admitted the right of the legislature to authorize their existence.

Still, however, he would be persuaded that there must be some plausible foundation for the cry raised on this head. He would never be able to imagine, while any source of information remained unexplored, that it was nothing more than an experiment upon the public credulity, dictated either by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous. It would probably occur to him, that he would be likely to find the precautions he was in search of, in the primitive compact between the states. Here at length, he would expect to meet with a solution of the enigma. No doubt, he would observe to himself, the existing confederation must contain the most explicit provisions against military establishments in time of peace; and a departure from this model in a favourite point, has occasioned the discontent, which appears to influence these political champions.

If he should now apply himself to a careful and critical survey of the articles of confederation, his astonishment would not only be increased, but would acquire a mixture of indignation, at the unexpected discovery, that these articles, instead of

"CONSENT OF THE LEGISLATURE;" which is a formal admission of the authority of the legislature. New-York has no bill of rights, and her constitution says not a word about the matter. No bills of rights appear annexed to the constitutions of the other states, and their constitutions are equally silent. I am told, however, that one or two states have bills of rights, which do not appear in this collection; but that those also recognize the right of the legislative authority in this respect.

containing the prohibition he looked for, and though they had, with jealous circumspection, restricted the authority of the state legislatures in this particular, had not imposed a single restraint on that of the United States. If he happened to be a man of quick sensibility, or ardent temper, he could now no longer refrain from pronouncing these clamours to be, the dishonest artifices of a sinister and unprincipled opposition, to a plan which ought at least to receive a fair and candid examination from all sincere lovers of their country! How else, he would say, could the authors of them have been tempted to vent such loud censures upon that plan, about a point, in which it seems to have conformed itself to the general sense of America as declared in its different forms of government, and in which it has even superadded a new and powerful guard unknown to any of them? If, on the contrary, he happened to be a man of calm and dispassionate feelings, he would indulge a sigh for the frailty of human nature, and would lament, that in a matter so interesting to the happiness of millions, the true merits of the question should be perplexed and obscured by expedients so unfriendly to an impartial and right determination. Even such a man could hardly forbear remarking, that a conduct of this kind has too much the appearance of an intention to mislead the people by alarming their passions, rather than to convince them by arguments addressed to their understandings.

But however little this objection may be countenanced, even by precedents among ourselves, it may be satisfactory to take a nearer view of its intrinsic merits. From a close examination, it will appear that restraints upon the discretion of the legislature, in re-

spect to military establishments, would be improper to be imposed; and if imposed, from the necessities of society, would be unlikely to be observed.

Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excess of confidence or security. On one side of us, stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. This situation, and the vicinity of the West-India islands, belonging to these two powers, create between them, in respect to their American possessions, and in relation to us, a common interest. The savage tribes on our western frontier, ought to be regarded as our natural enemies; their natural allies: because they have most to fear from us, and most to hope from them. The improvements in the art of navigation, have, as to the facility of communication, rendered distant nations, in a great measure, neighbours. Britain and Spain, are among the principal maritime powers of Europe. A future concert of views between these nations, ought not to be regarded as improbable. The increasing remoteness of consanguinity, is every day diminishing the force of the family compact between France and Spain. And politicians have ever, with great reason, considered the ties of blood as feeble and precarious links of political connexion. These circumstances, combined, admonish us not to be too sanguine in considering ourselves as entirely out of the reach of danger.

Previous to the revolution, and ever since the peace, there has been a constant necessity for keeping small garrisons on our western frontier. No per-

son can doubt, that these will continue to be indispensable, if it should only be to guard against the ravages and depredations of the Indians. These garrisons must either be furnished by occasional detachments from the militia, or by permanent corps in the pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia, in times of profound peace, would not long, if at all, submit to be dragged from their occupations and families, to perform that most disagreeable duty. And if they could be prevailed upon, or compelled to do it, the increased expense of a frequent rotation of service, and the loss of labour, and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burthensome and injurious to the public, as ruinous to private citizens. The latter resource of permanent corps in the pay of government, amounts to a standing army in time of peace; a small one, indeed, but not the less real for being small.

Here is a simple view of the subject, that shows us at once the impropriety of a constitutional interdiction of such establishments, and the necessity of leaving the matter to the discretion and prudence of the legislature.

In proportion to our increase in strength, it is probable, nay, it may be said certain, that Britain and Spain would augment their military establishments in our neighbourhood. If we should not be willing to be exposed, in a naked and defenceless condition, to their insults or encroachments, we should find it expedient to increase our frontier garrisons, in some ratio to the force by which our western settlements might be annoyed. There are, and will be, particular posts, the possession of which will include the

command of large districts of territory, and facilitate future invasions of the remainder. It may be added, that some of those posts will be keys to the trade with the Indian nations. Can any man think it would be wise, to leave such posts in a situation to be at any instant seized by one or the other of two neighbouring and formidable powers? To act this part, would be to desert all the usual maxims of prudence and policy.

If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavour, as soon as possible, to have a navy. To this purpose, there must be dock-yards and arsenals; and, for the defence of these, fortifications, and probably garrisons. When a nation has become so powerful by sea, that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that purpose; but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, be found an indispensable security against descents for the destruction of the arsenals and dock-yards, and sometimes of the fleet itself.

PUBLIUS.

NUMBER XXV.

BY MR. HAMILTON.

The Subject continued, with the same View.

IT may perhaps be urged, that the objects enumerated in the preceding number ought to be provid-

ed by the state governments, under the direction of the union. But this would be an inversion of the primary principle of our political association; as it would in practice transfer the care of the common defence from the federal head to the individual members: A project oppressive to some states, dangerous to all, and baneful to the confederacy.

The territories of Britain, Spain, and of the Indian nations in our neighbourhood, do not border on particular states; but encircle the union from MAINE to GEORGIA. The danger, though in different degrees, is therefore common. And the means of guarding against it, ought, in like manner, to be the objects of common councils, and of a common treasury. It happens that some states, from local situation, are more directly exposed. NEW-YORK is of this class. Upon the plan of separate provisions, New-York would have to sustain the whole weight of the establishments requisite to her immediate safety, and to the mediate, or ultimate protection of her neighbours. This would neither be equitable as it respected New-York, nor safe as it respected the other states. Various inconveniences would attend such a system. The states, to whose lot it might fall to support the necessary establishments, would be as little able as willing, for a considerable time to come, to bear the burthen of competent provisions. The security of all, would thus be subjected to the parsimony, improvidence, or inability of a part. If, from the resources of such part becoming more abundant, its provisions should be proportionably enlarged, the other states would quickly take the alarm at seeing the whole military force of the union in the hands of two or three of its members; and those probably amongst the most powerful,

They would each choose to have some counterpoise: and pretences could easily be contrived. In this situation, military establishments, nourished by mutual jealousy, would be apt to swell beyond their natural or proper size; and being at the separate disposal of the members, they would be engines for the abridgment, or demolition of the national authority.

Reasons have been already given to induce a supposition, that the state governments will too naturally be prone to a rivalship with that of the union, the foundation of which will be the love of power; and that in any contest between the federal head and one of its members, the people will be most apt to unite with their local government. If, in addition to this immense advantage, the ambition of the members should be stimulated by the separate and independent possession of military forces, it would afford too strong a temptation, and too great facility to them to make enterprises upon, and finally to subvert, the constitutional authority of the union. On the other hand, the liberty of the people would be less safe in this state of things, than in that which left the national forces in the hands of the national government. As far as an army may be considered as a dangerous weapon of power, it had better be in those hands, of which the people are most likely to be jealous, than in those of which they are least likely to be so. For it is a truth which the experience of all ages has attested, that the people are commonly most in danger, when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion.

The framers of the existing confederation, fully aware of the danger to the union from the separate

possession of military forces by the states, have in express terms, prohibited them from having either ships or troops, unless with the consent of congress. The truth is, that the existence of a federal government and military establishments, under state authority, are not less at variance with each other, than a due supply of the federal treasury, and the system of quotas and requisitions.

There are other views besides those already presented, in which the impropriety of restraints on the discretion of the national legislature will be equally manifest. The design of the objection, which has been mentioned, is to preclude standing armies in time of peace; though we have never been informed how far it is desired the prohibition should extend; whether to raising armies, as well as to *keeping them up*, in a season of tranquillity, or not. If it be confined to the latter, it will have no precise signification, and it will be ineffectual for the purpose intended. When armies are once raised, what shall be denominated "keeping them up," contrary to the sense of the constitution? What time shall be requisite to ascertain the violation? Shall it be a week, a month, a year? Or shall we say, they may be continued as long as the danger which occasioned their being raised continues? This would be to admit that they might be kept up *in time of peace*, against threatening or impending danger; which would be at once to deviate from the literal meaning of the prohibition, and to introduce an extensive latitude of construction. Who shall judge of the continuance of the danger? This must undoubtedly be submitted to the national government, and the matter would then be brought to this issue, that the national government, to provide against appre-

hended danger, might, in the first instance, raise troops, and might afterwards keep them on foot, as long as they supposed the peace or safety of the community was in any degree of jeopardy. It is easy to perceive, that a discretion so latitudinary as this, would afford ample room for eluding the force of the provision.

The utility of a provision of this kind, can only be vindicated on the hypothesis of a probability, at least possibility, of combination between the executive and legislature, in some schemes of usurpation.—Should this at any time happen, how easy would it be to fabricate pretences of approaching danger? Indian hostilities, instigated by Spain or Britain, would always be at hand. Provocations to produce the desired appearances, might even be given to some foreign power, and appeased again by timely concessions. If we can reasonably presume such a combination to have been formed, and that the enterprise is warranted by a sufficient prospect of success; the army when once raised, from whatever cause, or on whatever pretext, may be applied to the execution of the project.

If, to obviate this consequence, it should be resolved to extend the prohibition to the *raising* of armies in time of peace, the United States would then exhibit the most extraordinary spectacle, which the world has yet seen—that of a nation incapacitated by its constitution to prepare for defence, before it was actually invaded. As the ceremony of a formal denunciation of war has of late fallen into disuse, the presence of an enemy within our territories must be waited for, as the legal warrant to the government to begin its levies of men for the protection of the state. We must receive the blow, be-

fore we could even prepare to return it. All that kind of policy by which nations anticipate distant danger; and meet the gathering storm, must be abstained from, as contrary to the genuine maxims of a free government. We must expose our property and liberty to the mercy of foreign invaders, and invite them by our weakness, to seize the naked and defenceless prey, because we are afraid that rulers, created by our choice, dependent on our will, might endanger that liberty, by an abuse of the means necessary to its preservation.

Here I expect we shall be told, that the militia of the country is its natural bulwark, and would at all times be equal to the national defence. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States, that might have been saved. The facts, which from our own experience forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army, can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigour, confirm this position. The American militia, in the course of the late war, have, by their valour on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know, that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.

All violent policy, as it is contrary to the natural and experienced course of human affairs, defeats it-

self. Pennsylvania at this instant affords an example of the truth of this remark. The bill of rights of that state declares, that standing armies are dangerous to liberty, and ought not to be kept up in time of peace. Pennsylvania, nevertheless, in a time of profound peace, from the existence of partial disorders in one or two of her counties, has resolved to raise a body of troops; and in all probability, will keep them up as long as there is any appearance of danger to the public peace. The conduct of Massachusetts affords a lesson on the same subject, though on different ground. That state, (without waiting for the sanction of congress, as the articles of the confederation require,) was compelled to raise troops to quell a domestic insurrection, and still keeps a corps in pay to prevent a revival of the spirit of revolt. The particular constitution of Massachusetts opposed no obstacle to the measure; but the instance is still of use to instruct us, that cases are likely to occur under our governments, as well as under those of other nations, which will sometimes render a military force in time of peace, essential to the security of the society, and that it is therefore improper, in this respect, to control the legislative discretion. It also teaches us, in its application to the United States, how little the rights of a feeble government are likely to be respected, even by its own constituents. And it teaches us, in addition to the rest, how unequal are parchment provisions, to a struggle with public necessity.

It was a fundamental maxim of the Lacedemonian commonwealth, that the post of admiral should not be conferred twice on the same person. The Peloponesian confederates, having suffered a severe defeat at sea from the Athenians, demanded Lysander,

who had before served with success in that capacity, to command the combined fleets. The Lacedemonians, to gratify their allies, and yet preserve the semblance of an adherence to their ancient institutions, had recourse to the flimsy subterfuge of investing Lysander with the real power of admiral, under the nominal title of vice-admiral. This instance is selected from among a multitude that might be cited, to confirm the truth already advanced and illustrated by domestic examples; which is, that nations pay little regard to rules and maxims, calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed; because they know, that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence, which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches, where the same plea of necessity does not exist at all, or is less urgent and palpable.

PUBLIUS.

NUMBER XXVI.

BY MR. HAMILTON.

The Subject continued, with the same View.

IT was a thing hardly to have been expected, that in a popular revolution, the minds of men should stop at that happy mean which marks the salutary

boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. A failure in this delicate and important point, is the great source of the inconveniences we experience; and if we are not cautious to avoid a repetition of the error, in our future attempts to rectify and meliorate our system, we may travel from one chimerical project to another; we may try change after change; but we shall never be likely to make any material change for the better.

The idea of restraining the legislative authority, in the means for providing for the national defence, is one of those refinements, which owe their origin to a zeal for liberty more ardent than enlightened. We have seen, however, that it has not had thus far an extensive prevalency; that even in this country, where it made its first appearance, Pennsylvania and North-Carolina are the only two states by which it has been in any degree patronised; and that all the others have refused to give it the least countenance. They wisely judged that confidence must be placed somewhere; that the necessity of doing it, is implied in the very act of delegating power; and that it is better to hazard the abuse of that confidence, than to embarrass the government and endanger the public safety, by impolitic restrictions on the legislative authority. The opponents of the proposed constitution, combat in this respect the general decision of America; and instead of being taught by experience the propriety of correcting any extremes into which we may have heretofore run, they appear disposed to conduct us into others still more dangerous, and more extravagant. As if the tone of government had been found too high, or too rigid, the doctrines they teach are calculated to induce us to depress,

or to relax it, by expedients which, upon other occasions, have been condemned or forborne. It may be affirmed without the imputation of invective, that if the principles they inculcate on various points, could so far obtain as to become the popular creed, they would utterly unfit the people of this country for any species of government whatever. But a danger of this kind is not to be apprehended. The citizens of America have too much discernment to be argued into anarchy. And I am much mistaken if experience has not wrought a deep and solemn conviction in the public mind, that greater energy of government is essential to the welfare and prosperity of the community.

It may not be amiss in this place, concisely to remark the origin and progress of the idea, which aims at the exclusion of military establishments in time of peace. Though, in speculative minds, it may arise from a contemplation of the nature and tendency of such institutions, fortified by the events that have happened in other ages and countries; yet, as a national sentiment, it must be traced to those habits of thinking which we derive from the nation, from which the inhabitants of these states have in general sprung.

In England, for a long time after the Norman conquest, the authority of the monarch was almost unlimited. Inroads were gradually made upon the prerogative, in favour of liberty, first by the barons, and afterwards by the people, till the greatest part of its most formidable pretensions became extinct. But it was not till the revolution in 1688, which elevated the prince of Orange to the throne of Great Britain, that English liberty was completely triumphant. As incident to the undefined power of mak-

ing war, an acknowledged prerogative of the crown, Charles II. had, by his own authority, kept on foot in time of peace, a body of 5,000 regular troops. And this number James II. increased to 30,000; who were paid out of his civil list. At the revolution, to abolish the exercise of so dangerous an authority, it became an article of the bill of rights then framed, that "raising, or keeping a standing army within the kingdom in time of peace, *unless with the consent of parliament*, was against law."

In that kingdom, when the pulse of liberty was at its highest pitch, no security against the danger of standing armies was thought requisite, beyond a prohibition of their being raised or kept up by the mere authority of the executive magistrate. The patriots who effected that memorable revolution, were too temperate, and too well-informed, to think of any restraint on the legislative discretion. They were aware, that a certain number of troops for guards and garrisons, were indispensable; that no precise bounds could be set to the national exigencies; that a power equal to every possible contingency must exist somewhere in the government; and that when they referred the exercise of that power to the judgment of the legislature, they had arrived at the ultimate point of precaution, which was reconcileable with the safety of the community.

From the same source, the people of America may be said to have derived an hereditary impression of danger to liberty, from standing armies in time of peace. The circumstances of a revolution, quickened the public sensibility on every point connected with the security of popular rights; and in some instances raised the warmth of our zeal beyond the degree which consisted with the due temperature of

the body politic. The attempts of two of the states to restrict the authority of the legislature in the article of military establishments, are of the number of these instances. The principles which had taught us to be jealous of the power of an hereditary monarch, were, by an injudicious excess, extended to the representatives of the people in their popular assemblies. Even in some of the states where this error was not adopted, we find unnecessary declarations, that standing armies ought not to be kept up in time of peace, *without the consent of the legislature;* I call them unnecessary, because the reason, which had introduced a similar provision into the English bill of rights, is not applicable to any of the state constitutions. The power of raising armies at all, under those constitutions, can by no construction be deemed to reside any where else, than in the legislatures themselves; and it was superfluous, if not absurd, to declare that a matter should not be done without the consent of a body, which alone had the power of doing it. Accordingly, in some of those constitutions, and among others in that of the state of New-York, which has been justly celebrated, both in Europe and America, as one of the best of the forms of government established in this country, there is a total silence upon the subject.

It is remarkable, that even in the two states, which seem to have meditated an interdiction of military establishments in time of peace, the mode of expression made use of, is rather monitory than prohibitory. It is not said, that standing armies *shall not be* kept up, but that they *ought not* to be kept up in time of peace. This ambiguity of terms appears to have been the result of a conflict between jealousy and conviction, between the desire of excluding such es-

tablishments at all events, and the persuasion that an absolute exclusion would be unwise and unsafe.

Can it be doubted that such a provision, whenever the situation of public affairs was understood to require a departure from it, would be interpreted by the legislature into a mere admonition, and would be made to yield to the actual or supposed necessities of the state? Let the fact already mentioned with respect to Pennsylvania, decide. What, then, it may be asked, is the use of such a provision, if it cease to operate, the moment there is an inclination to disregard it?

Let us examine, whether there be any comparison in point of efficacy, between the provision alluded to, and that which is contained in the new constitution, for restraining the appropriations of money for military purposes, to the period of two years. The former, by aiming at too much, is calculated to effect nothing; the latter, by steering clear of an imprudent extreme, and by being perfectly compatible with a proper provision for the exigencies of the nation, will have a salutary and powerful operation.

The legislature of the United States will be *obliged*, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They are not *at liberty* to vest in the executive department, permanent funds for the support of an army; if they were even incautious enough to be willing to repose in it so improper a confidence. As the spirit of party, in different degrees, must be expected to infect all political bodies, there will be, no doubt, persons in the national legislature willing enough to assign the

measures, and criminate the views of the majority. The provision for the support of a military force, will always be a favourable topic for declamation. As often as the question comes forward, the public attention will be roused and attracted to the subject, by the party in opposition: And if the majority should be really disposed to exceed the proper limits, the community will be warned of the danger, and will have an opportunity of taking measures to guard against it. Independent of parties in the national legislature itself, as often as the period of discussion arrived, the state legislatures, who will always be not only vigilant, but suspicious and jealous guardians of the rights of the citizens, against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but if necessary, the ARM of their discontent.

Schemes to subvert the liberties of a great community, *require time* to mature them for execution. An army, so large as seriously to menace those liberties, could only be formed by progressive augmentations; which would suppose, not merely a temporary combination between the legislature and executive, but a continued conspiracy for a series of time. Is it probable that such a combination would exist at all? Is it probable that it would be persevered in, and transmitted through all the successive variations in the representative body, which biennial elections would naturally produce in both houses? Is it presumable, that every man, the instant he took his seat in the national senate, or house of representatives, would commence a traitor to his constituents, and to

his country? Can it be supposed, that there would not be found one man, discerning enough to detect so atrocious a conspiracy, or bold or honest enough to apprise his constituents of their danger? If such presumptions can fairly be made, there ought at once to be an end of all delegated authority. The people should resolve to recall all the powers they have heretofore parted with; and to divide themselves into as many states as there are counties, in order that they may be able to manage their own concerns in person.

If such suppositions could even be reasonably made, still the concealment of the design, for any duration, would be impracticable. It would be announced, by the very circumstance of augmenting the army to so great an extent, in time of profound peace. What colourable reason could be assigned, in a country so situated, for such vast augmentations of the military force? It is impossible that the people could be long deceived; and the destruction of the project, and of the projectors, would quickly follow the discovery.

It has been said, that the provision, which limits the appropriation of money for the support of an army to the period of two years, would be unavailing; because the executive, when once possessed of a force large enough to awe the people into submission, would find resources in that very force, sufficient to enable him to dispense with supplies from the votes of the legislature. But the question again recurs: Upon what pretence could he be put in possession of a force of that magnitude, in time of peace? If we suppose it to have been created in consequence of some domestic insurrection or foreign war, then it becomes a case not within the principle of the objec-

tion; for this is levelled against the power of keeping up troops in time of peace. Few persons will be so visionary, as seriously to contend that military forces ought not to be raised to quell a rebellion, or resist an invasion; and if the defence of the community, under such circumstances, should make it necessary to have an army so numerous as to hazard its liberty, this is one of those calamities for which there is neither preventive nor cure. It cannot be provided against, by any possible form of government: It might even result from a simple league offensive and defensive; if it should ever be necessary for the confederates or allies, to form an army for common defence.

But it is an evil infinitely less likely to attend us in an united, than in a disunited state; nay, it may be safely asserted, that it is an evil altogether unlikely to attend us in the latter situation. It is not easy to conceive a possibility, that dangers so formidable can assail the whole union, as to demand a force considerable enough to place our liberties in the least jeopardy; especially if we take into view the aid to be derived from the militia, which ought always to be counted upon, as a valuable and powerful auxiliary. But in a state of disunion, as has been fully shown in another place, the contrary of this supposition would become not only probable, but almost unavoidable.

PUBLIUS.

NUMBER XXVII.

BY MR. HAMILTON.

The Subject continued, with the same View.

IT has been urged, in different shapes, that a constitution of the kind proposed by the convention, cannot operate, without the aid of a military force to execute its laws. This, however, like most other things that have been alleged on that side, rests on mere general assertion, unsupported by any precise or intelligible designation of the reasons upon which it is founded. As far as I have been able to divine the latent meaning of the objectors, it seems to originate in a pre-supposition, that the people will be disinclined to the exercise of federal authority, in any matter of an internal nature. Waiving any exception that might be taken to the inaccuracy, or inexplicitness of the distinction between internal and external, let us inquire what ground there is to presuppose that disinclination in the people. Unless we presume, at the same time, that the powers of the general government will be worse administered than those of the state governments, there seems to be no room for the presumption of ill will, disaffection, or opposition in the people. I believe it may be laid down as a general rule, that their confidence in, and their obedience to, a government, will commonly be proportioned to the goodness or badness of its administration. It must be admitted, that there are exceptions to this rule; but these exceptions depend

so entirely on accidental causes, that they cannot be considered as having any relation to the intrinsic merits or demerits of a constitution. These can only be judged of by general principles and maxims.

Various reasons have been suggested, in the course of these papers, to induce a probability, that the general government will be better administered, than the particular governments; the principal of which are, that the extension of the spheres of election will present a greater option or latitude of choice to the people; that, through the medium of the state legislatures, who are select bodies of men, and who are to appoint the members of the national senate, there is reason to expect, that this branch will generally be composed with peculiar care and judgment; that these circumstances promise greater knowledge, and more comprehensive information, in the national councils; and that, on account of the extent of the country from which will be drawn those to whose direction they will be committed, they will be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill humours or temporary prejudices and propensities, which, in smaller societies, frequently contaminate the public deliberations, beget injustice and oppression towards a part of the community, and engender schemes, which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust. Several additional reasons of considerable force will occur, to fortify that probability, when we come to survey, with a more critical eye, the interior structure of the edifice which we are invited to erect. It will be sufficient here to remark, that, until satisfactory reasons can be assigned to justify an opinion, that the federal government is

likely to be administered in such a manner as to render it odious or contemptible to the people, there can be no reasonable foundation for the supposition, that the laws of the union will meet with any greater obstruction from them, or will stand in need of any other methods to enforce their execution, than the laws of the particular members.

The hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionably strong discouragement to it. Will not the government of the union, which, if possessed of a due degree of power, can call to its aid the collective resources of the whole confederacy, be more likely to repress the *former* sentiment, and to inspire the *latter*, than that of a single state, which can only command the resources within itself? A turbulent faction in a state, may easily suppose itself able to contend with the friends to the government in that state; but it can hardly be so infatuated, as to imagine itself equal to the combined efforts of the union. If this reflection be just, there is less danger of resistance from irregular combinations of individuals, to the authority of the confederacy, than to that of a single member.

I will, in the first place, hazard an observation, which will not be the less just, because to some it may appear new; which is, that the more the operations of the national authority are intermingled in the ordinary exercise of government, the more the citizens are accustomed to meet with it in the common occurrences of their political life; the more it is familiarized to their sight, and to their feelings; the further it enters into those objects, which touch the most sensible cords, and put in motion the most active springs of the human heart; the

greater will be the probability, that it will conciliate the respect and attachment of the community. Man is very much a creature of habit. A thing that rarely strikes his senses, will have but a transient influence upon his mind. A government continually at a distance and out of sight, can hardly be expected to interest the sensations of the people. The inference is, that the authority of the union, and the affections of the citizens towards it, will be strengthened, rather than weakened, by its extension to what are called matters of internal concern; and that it will have less occasion to recur to force, in proportion to the familiarity and comprehensiveness of its agency. The more it circulates through those channels and currents, in which the passions of mankind naturally flow, the less will it require the aid of the violent and perilous expedients of compulsion.

One thing, at all events, must be evident; that a government like the one proposed, would bid much fairer to avoid the necessity of using force, than the species of league contended for by most of its opponents; the authority of which should only operate upon the states in their political or collective capacities. It has been shown, that in such a confederacy, there can be no sanction for the laws, but force; that frequent delinquencies in the members, are the natural offspring of the very frame of the government; and that as often as these happen, they can only be redressed, if at all, by war and violence.

The plan reported by the convention, by extending the authority of the federal head to the individual citizens of the several states, will enable the government to employ the ordinary magistracy of each, in the execution of its laws. It is easy to perceive,

that this will tend to destroy, in the common apprehension, all distinction between the sources from which they might proceed; and will give the federal government the same advantage for securing a due obedience to its authority, which is enjoyed by the government of each state; in addition to the influence on public opinion, which will result from the important consideration of its having power to call to its assistance and support the resources of the whole union. It merits particular attention in this place, that the laws of the confederacy, as to the *enumerated* and *legitimate* objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which, all officers, legislative, executive, and judicial, in each state, will be bound by the sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government, *as far as its just and constitutional authority extends;* and will be rendered auxiliary to the enforcement of its laws*. Any man who will pursue, by his own reflections, the consequences of this situation, will perceive, that if its powers are administered with a common share of prudence, there is good ground to calculate upon a regular and peaceable execution of the laws of the union. If we will arbitrarily suppose the contrary, we may deduce any inferences we please from the supposition; for it is certainly possible, by an injudicious exercise of the authorities of the best government that ever was, or ever can be instituted, to provoke and precipitate the people into the wildest excesses. But though the

* The sophistry which has been employed, to show that this will tend to the destruction of the state governments will, in its proper place, be fully detected.

adversaries of the proposed constitution should presume that the national rulers would be insensible to the motives of public good, or to the obligations of duty; I would still ask them, how the interests of ambition, or the views of encroachment, can be promoted by such a conduct?

PUBLIUS.

NUMBER XXVIII.

BY MR. HAMILTON.

The same Subject continued.

THAT there may happen cases in which the national government may be under the necessity of resorting to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes exist in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic, as tumours and eruptions from the natural body; that the idea of governing at all times by the simple force of law, (which we have been told is the only admissible principle of republican government,) has no place but in the reverie of those political doctors, whose sagacity disdains the admonitions of experimental instruction.

Should such emergencies at any time happen under the national government, there could be no re-

medy but force. The means to be employed, must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a state, the militia of the residue would be adequate to its suppression: and the natural presumption is, that they would be ready to do their duty. An insurrection, whatever may be its immediate cause, eventually endangers all government: regard to the public peace, if not to the rights of the union, would engage the citizens to whom the contagion had not communicated itself, to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support.

If, on the contrary, the insurrection should pervade a whole state, or a principal part of it, the employment of a different kind of force might become unavoidable. It appears that Massachusetts found it necessary to raise troops for suppressing the disorders within that state; that Pennsylvania, from the mere apprehension of commotions among a part of her citizens, has thought proper to have recourse to the same measure. Suppose the state of New-York had been inclined to re-establish her lost jurisdiction over the inhabitants of Vermont; could she have hoped for success in such an enterprise, from the efforts of the militia alone? Would she not have been compelled to raise, and to maintain, a more regular force for the execution of her design? If it must then be admitted, that the necessity of recurring to a force different from the militia, in cases of this extraordinary nature, is applicable to the state governments themselves, why should the possibility, that the national government might be under a like

necessity in similar extremities, be made an objection to its existence? Is it not surprising that men, who declare an attachment to the union in the abstract, should urge, as an objection to the proposed constitution, what applies with ten-fold weight to the plan for which they contend; and what, as far as it has any foundation in truth, is an inevitable consequence of civil society upon an enlarged scale? Who would not prefer that possibility, to the unceasing agitations, and frequent revolutions, which are the continual scourges of petty republics?

Let us pursue this examination in another light. Suppose, in lieu of one general system, two or three, or even four confederacies were to be formed, would not the same difficulty oppose itself to the operations of either of these confederacies? Would not each of them be exposed to the same casualties; and when these happened, be obliged to have recourse to the same expedients for upholding its authority, which are objected to a government for all the states? Would the militia, in this supposition, be more ready or more able to support the federal authority, than in the case of a general union? All candid and intelligent men must, upon due consideration, acknowledge, that the principle of the objection is equally applicable to either of the two cases; and that whether we have one government for all the states, or different governments for different parcels of them, or as many unconnected governments as there are states, there might sometimes be a necessity, to make use of a force constituted differently from the militia, to preserve the peace of the community, and to maintain the just authority of the laws against those violent invasions of them, which amount to insurrections and rebellions.

Independent of all other reasonings upon the subject, it is a full answer to those who require a more peremptory provision against military establishments in time of peace, to say, that the whole power of the proposed government is to be in the hands of the representatives of the people. This is the essential, and, after all, the only efficacious security for the rights and privileges of the people, which is attainable in civil society*.

If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defence, which is paramount to all positive forms of government; and which, against the usurpation of the national rulers, may be exerted with an infinitely better prospect of success, than against those of the rulers of an individual state. In a single state, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts, of which it consists, having no distinct government in each, can take no regular measures for defence. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo. The smaller the extent of territory, the more difficult will it be for the people to form a regular, or systematic plan of opposition; and the more easy will it be to defeat their early efforts. Intelligence can be more speedily obtained of their preparations and movements; and the military force in the possession of the usurpers, can be more rapidly directed against the part where the opposition has begun. In this situation, there must be a peculiar

* Its full efficacy will be examined hereafter.

coincidence of circumstances, to ensure success to the popular resistance.

The obstacles to usurpation, and the facilities of resistance, increase with the increased extent of the state; provided the citizens understand their rights, and are disposed to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small; and of course more competent to a struggle with the attempts of the government to establish a tyranny. But in a confederacy, the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power; the general government will, at all times, stand ready to check the usurpations of the state governments; and these will have the same disposition towards the general governmnet. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other, as the instrument of redress. How wise will it be in them, by cherishing the union, to preserve to themselves an advantage which can never be too highly prized!

It may safely be received as an axiom in our political system, that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretences, so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information; they can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once

adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different states; and unite their common forces, for the protection of their common liberty.

The great extent of the country, is a further security. We have already experienced its utility, against the attacks of a foreign enemy. And it would have precisely the same effect against the enterprises of ambitious rulers in the national councils. If the federal army should be able to quell the resistance of one state, the distant states would have it in their power, to make head with fresh forces. The advantages obtained in one place must be abandoned, to subdue the opposition in others; and the moment the part which had been reduced to submission was left to itself, its efforts would be renewed, and its resistance revive.

We should recollect, that the extent of the military force must, at all events, be regulated by the resources of the country. For a long time to come, it will not be possible to maintain a large army; and as the means of doing this, increase the population, and the natural strength of the community will proportionably increase. When will the time arrive, that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire; who are in a situation, through the medium of their state governments, to take measures for their own defence with all the celerity, regularity, and system, of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning.

PUBLIUS.

NUMBER XXIX.

BY MR. HAMILTON.

Concerning the Militia.

THE power of regulating the militia, and of commanding its services in times of insurrection and invasion, are natural incidents to the duties of superintending the common defence, and of watching over the internal peace of the confederacy.

It requires no skill in the science of war to discern, that uniformity in the organization and discipline of the militia, would be attended with the most beneficial effects, whenever they were called into service for the public defence. It would enable them to discharge the duties of the camp, and of the field, with mutual intelligence and concert; an advantage of peculiar moment in the operations of an army; and it would fit them much sooner to acquire the degree of proficiency in military functions, which would be essential to their usefulness. This desirable uniformity can only be accomplished, by confiding the regulation of the militia to the direction of the national authority. It is therefore with the most evident propriety, that the plan of the convention proposes to empower the union "to "provide for organizing, arming, and disciplining "the militia, and for governing such part of them "as may be employed in the service of the United "States, *reserving to the states respectively the ap-*

" *pointment of the officers, and the authority of train-*
" *ing the militia according to the discipline prescribed*
" *by Congress.*"

Of the different grounds which have been taken in opposition to this plan, there is none that was so little to have been expected, or is so untenable in itself, as the one from which this particular provision has been attacked. If a well regulated militia be the most natural defence of a free country, it ought certainly to be under the regulation, and at the disposal of that body, which is constituted the guardian of the national security. If standing armies are dangerous to liberty, an efficacious power over the militia, in the same body, ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions. If the federal government can command the aid of the militia in those emergencies, which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence, than a thousand prohibitions upon paper.

In order to cast an odium upon the power of calling forth the militia to execute the laws of the union, it has been remarked, that there is no where any provision in the proposed constitution for requiring the aid of the POSSE COMITATUS, to assist the magistrate in the execution of his duty; whence it has been inferred, that military force was intended to be his only auxiliary. There is a striking incoherence in the objections which have appeared, and sometimes even from the same quarter, not much

calculated to inspire a very favourable opinion of the sincerity or fair dealing of their authors. The same persons who tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE COMITATUS. The latter, fortunately, is as much short of the truth, as the former exceeds it. It would be as absurd to doubt, that a right to pass all laws *necessary* and *proper* to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws; as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes, would involve that of varying the rules of descent, and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it. It being therefore evident, that the supposition of a want of power to require the aid of the POSSE COMITATUS is entirely destitute of colour, it will follow, that the conclusion which has been drawn from it, in its application to the authority of the federal government over the militia, is as uncandid as it is illogical. What reason could there be to infer, that force was intended to be the sole instrument of authority, merely because there is a power to make use of it when necessary? What shall we think of the motives which could induce men of sense to reason in this extraordinary manner? How shall we prevent a conflict between charity and conviction?

By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend danger from the militia itself, in the hands of the federal government. It is observed, that select corps

may be formed, composed of the young and the ardent, who may be rendered subservient to the views of arbitrary power. What plan for the regulation of the militia may be pursued by the national government, is impossible to be foreseen. But so far from viewing the matter in the same light with those who object to select corps as dangerous, were the constitution ratified, and were I to deliver my sentiments to a member of the federal legislature on the subject of a militia establishment, I should hold to him in substance the following discourse:

"The project of disciplining all the militia of "the United States, is as futile as it would be in-"jurious, if it were capable of being carried into "execution. A tolerable expertness in military "movements, is a business that requires time and "practice. It is not a day, nor a week, nor even "a month, that will suffice for the attainment "of it. To oblige the great body of the yeomanry, "and of the other classes of the citizens, to be "under arms for the purpose of going through mi-"litary exercises and evolutions, as often as might "be necessary, to acquire the degree of perfection "which would entitle them to the character of a "well regulated militia, would be a real grievance "to the people, and a serious public inconveni-"ence and loss. It would form an annual deduc-"tion from the productive labour of the country, "to an amount, which, calculating upon the pre-"sent numbers of the people, would not fall far "short of a million of pounds. To attempt a "thing which would abridge the mass of labour and "industry to so considerable an extent, would be un-"wise; and the experiment, if made, could not suc-"ceed, because it would not long be endured. Little

"more can reasonably be aimed at, with respect "to the people at large, than to have them properly "armed and equipped; and in order to see that this "be not neglected, it will be necessary to assemble "them once or twice in the course of a year.

"But, though the scheme of disciplining the whole "nation must be abandoned as mischievous or im-"practicable; yet it is a mattter of the utmost im-"portance, that a well digested plan should, as soon "as possible, be adopted for the proper establishment "of the militia. The attention of the government "ought particularly to be directed to the formation "of a select corps of moderate size, upon such prin-"ciples as will really fit it for service in case of need. "By thus circumscribing the plan, it will be possible "to have an excellent body of well trained militia, "ready to take the field whenever the defence of "the state shall require it. This will not only lessen "the call for military establishments; but if circum-"stances should at any time oblige the government "to form an army of any magnitude, that army can "never be formidable to the liberties of the people, "while there is a large body of citizens, little, if at "all, inferior to them in discipline and the use of "arms, who stand ready to defend their own rights, "and those of their fellow-citizens. This appears to "me the only substitute that can be devised for a "standing army; and the best possible security a-"gainst it if it should exist."

Thus differently from the adversaries of the proposed constitution should I reason on the same subject; deducing arguments of safety, from the very sources which they represent as fraught with danger and perdition. But how the national legislature may

reason on the point, is a thing which neither they nor I can foresee.

There is something so far-fetched, and so extravagant, in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice, to instil prejudices at any price; or as the serious offspring of political fanaticism.—Where, in the name of common sense, are our fears to end, if we may not trust our sons, our brothers, our neighbours, our fellow-citizens? What shadow of danger can there be from men, who are daily mingling with the rest of their countrymen; and who participate with them in the same feelings, sentiments, habits, and interests? What reasonable cause of apprehension can be inferred from a power in the union to prescribe regulations for the militia, and to command its services when necessary; while the particular states are to have the *sole and exclusive appointment of the officers?* If it were possible seriously to indulge a jealousy of the militia, upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the states, ought at once to extinguish it.—There can be no doubt, that this circumstance will always secure to them a preponderating influence over the militia.

In reading many of the publications against the constitution, a man is apt to imagine that he is perusing some ill written tale or romance; which, instead of natural and agreeable images, exhibits to the mind nothing but frightful and distorted shapes—

"Gorgons, Hydras, and Chimeras dire;"

discolouring and disfiguring whatever it represents,

and transforming every thing it touches into a monster.

A sample of this is to be observed in the exaggerated and improbable suggestions, which have taken place respecting the power of calling for the services of the militia. That of New-Hampshire is to be marched to Georgia, of Georgia to New-Hampshire, of New-York to Kentucky, and of Kentucky to Lake Champlain. Nay, the debts due to the French and Dutch, are to be paid in militia men, instead of Louis d'ors and ducats. At one moment, there is to be a large army to lay prostrate the liberties of the people; at another moment, the militia of Virginia are to be dragged from their homes, five or six hundred miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to be transported an equal distance, to subdue the refractory haughtiness of the aristocratic Virginians. Do the persons, who rave at this rate, imagine, that their art or their eloquence can impose any conceits or absurdities upon the people of America for infallible truths?

If there should be an army to be made use of as the engine of despotism, what need of the militia? If there should be no army, whither would the militia, irritated at being required to undertake a distant and distressing expedition, for the purpose of rivetting the chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish, as well as so wicked a project; to crush them in their imagined entrenchments of power, and make them an example of the just vengeance of an abused and incensed people? Is this the way in which usurpers stride to dominion over a numerous and enlighten-

ed nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually commence their career by wanton and disgustful acts of power, calculated to answer no end, but to draw upon themselves universal hatred and execration? Are suppositions of this sort, the sober admonitions of discerning patriots to a discerning people? Or are they the inflammatory ravings of chagrined incendiaries, or distempered enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable ambition, it is impossible to believe that they would employ such preposterous means to accomplish their designs.

In times of insurrection, or invasion, it would be natural and proper, that the militia of a neighbouring state should be marched into another, to resist a common enemy, or to guard the republic against the violences of faction or sedition. This was frequently the case, in respect to the first object, in the course of the late war; and this mutual succour is, indeed, a principal end of our political association. If the power of affording it be placed under the direction of the union, there will be no danger of a supine and listless inattention to the dangers of a neighbour, till its near approach had superadded the incitements of self-preservation, to the too feeble impulses of duty and sympathy.

PUBLIUS.

NUMBER XXX.

BY MR. HAMILTON.

Concerning Taxation.

IT has been already observed, that the federal government ought to possess the power of providing for the support of the national forces; in which proposition was intended to be included the expense of raising troops, of building and equipping fleets, and all other expenses in any wise connected with military arrangements and operations. But these are not the only objects to which the jurisdiction of the union, in respect to revenue, must necessarily be impowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury. The conclusion is, that there must be interwoven in the frame of the government, a general power of taxation in one shape or another.

Money is with propriety considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency

in this particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and in a short course of time perish.

In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the lives and fortunes of his subjects, has no right to impose a new tax. The consequence is, that he permits the bashaws or governors of provinces to pillage the people at discretion; and, in turn, squeezes out of them the sums of which he stands in need, to satisfy his own exigencies, and those of the state. In America, from a like cause, the government of the union has gradually dwindled into a state of decay, approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries would be promoted by competent authorities in the proper hands, to provide the revenues which the necessities of the public might require?

The present confederation, feeble as it is, intended to repose in the United States an unlimited power of providing for the pecuniary wants of the union. But proceeding upon an erroneous principle, it has been done in such a manner, as entirely to have frustrated the intention. Congress, by the articles which compose that compact, (as has been already stated,) are authorized to ascertain and call for any sums of money necessary, in their judgment, to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are, in every constitutional sense, obligatory upon the states. These have no right to question

the propriety of the demand: no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of union; though it may seldom or never have been avowedly claimed; yet in practice it has been constantly exercised, and would continue to be so, as long as the revenues of the confederacy should remain dependent on the intermediate agency of its members. What the consequences of the system have been, is within the knowledge of every man, the least conversant in our public affairs, and has been abundantly unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation, that affords ample cause of mortification to ourselves, and of triumph to our enemies.

What remedy can there be for this situation, but in a change of the system which has produced it? in a change of the fallacious and delusive system of quotas and requisitions? What substitute can there be imagined for this *ignis fatuus* in finance, but that of permitting the national government to raise its own revenues by the ordinary methods of taxation, authorized in every well ordered constitution of civil government? Ingenious men may declaim with plausibility on any subject; but no human ingenuity can point out any other expedient to rescue us from the inconveniences and embarrassments, naturally resulting from defective supplies of the public treasury. The more intelligent adversaries of the new constitution, admit the force of this reasoning; but they qualify their admission, by a distinction between what they call *internal*, and *external* taxations.

The former they would reserve to the state governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head. This distinction, however, would violate that fundamental maxim of good sense and sound policy, which dictates, that every POWER ought to be proportionate to its OBJECT; and would still leave the general government in a kind of tutelage to the state governments, inconsistent with every idea of vigour or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of the union? Taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment, which a man, moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments, which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves, that this resource alone, upon the most improved scale, would even suffice for its present necessities. Its future necessities admit not of calculation or limitation; and upon the principle more than once adverted to, the power of making provision for them as they arise, ought to be equally unconfined. I believe it may be regarded as a position, warranted by the history of mankind, that *in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources.*

To say that deficiencies may be provided for by requisitions upon the states, is on the one hand to acknowledge that this system cannot be depended upon; and on the other hand, to depend upon it for every thing beyond a certain limit. Those who have carefully attended to its vices and deformities,

as they have been exhibited by experience, or delineated in the course of these papers, must feel an invincible repugnancy to trusting the national interests, in any degree, to its operation. Whenever it is brought into activity, its inevitable tendency must be to enfeeble the union, and sow the seeds of discord and contention between the federal head and its members, and between the members themselves. Can it be expected that the deficiencies would be better supplied in this mode, than the total wants of the union have heretofore been supplied, in the same mode? It ought to be recollected, that if less will be required from the states, they will have proportionably less means to answer the demand. If the opinions of those who contend for the distinction which has been mentioned, were to be received as evidence of truth, one would be led to conclude, that there was some known point in the economy of national affairs, at which it would be safe to stop, and to say: Thus far, the ends of public happiness will be promoted by supplying the wants of government, and all beyond this is unworthy of our care or anxiety. How is it possible that a government, half supplied, and always necessitous, can fulfil the purposes of its institution; can provide for the security, advance the prosperity, or support the reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at home, or respectability abroad? How can its administration be any thing else than a succession of expedients, temporizing, impotent, disgraceful? How will it be able to avoid a frequent sacrifice of its engagements to immediate necessity? How can it undertake or execute any liberal or enlarged plans of public good?

Let us attend to what would be the effects of this situation, in the very first war in which we should happen to be engaged. We will presume, for argument sake, that the revenue arising from the import duties answers the purposes of a provision for the public debt, and of a peace establishment for the union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience, that proper dependence could not be placed on the success of requisitions; unable, by its own authority, to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated, from their proper objects, to the defence of the state? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was become essential to the public safety. To imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In the modern system of war, nations the most wealthy, are obliged to have recourse to large loans. A country so little opulent as ours, must feel this necessity in a much stronger degree. But who would lend to a government, that prefaced its overtures for borrowing, by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure, would be as limited in their extent, as burthensome in their conditions.—They would be made upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors—with a sparing hand, and at enormous premiums.

It may perhaps be imagined, that from the scantiness of the resources of the country, the necessity of diverting the established funds in the case supposed, would exist; though the national government should possess an unrestrained power of taxation. But two considerations will serve to quiet all apprehension on this head; one is, that we are sure the resources of the community in their full extent, will be brought into activity for the benefit of the union; the other is, that whatever deficiencies there may be, can without difficulty be supplied by loans.

The power of creating, by its own authority, new funds from new objects of taxation, would enable the national government to borrow, as far as its necessities might require. Foreigners, as well as the citizens of America, could then reasonably repose confidence in its engagements; but to depend upon a government, that must itself depend upon thirteen other governments, for the means of fulfilling its contracts, when once its situation is clearly understood; would require a degree of credulity, not often to be met with in the pecuniary transactions of mankind, and little reconcileable with the usual sharpsightedness of avarice.

Reflections of this kind may have trifling weight with men, who hope to see the halcyon scenes of the poetic or fabulous age realized in America; but to those who believe we are likely to experience a common portion of the vicissitudes and calamities, which have fallen to the lot of other nations, they must appear entitled to serious attention. Such men must behold the actual situation of their country with painful solicitude, and deprecate the evils which ambition or revenge might, with too much facility, inflict upon it.

PUBLIUS.

NUMBER XXXI.

BY MR. HAMILTON.

The same Subject continued.

IN disquisitions of every kind, there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence, which, antecedent to all reflection or combination, commands the assent of the mind. Where it produces not this effect, it must proceed either from some disorder in the organs of perception, or from the influence of some strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that the whole is greater than its part; that things equal to the same, are equal to one another; that two straight lines cannot inclose a space; and that all right angles are equal to each other. Of the same nature, are these other maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to be proportioned to the end; that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to effect a purpose, which is itself incapable of limitation. And there are other truths in the two latter sciences, which, if they cannot pretend to rank in the class of axioms, are such direct inferences from them, and so obvious in themselves, and so agreeable to the natural and unsophisticated dic-

tates of common sense, that they challenge the assent of a sound and unbiassed mind, with a degree of force and conviction almost equally irresistible.

The objects of geometrical inquiry, are so entirely abstracted from those pursuits which stir up and put in motion the unruly passions of the human heart, that mankind, without difficulty, adopt not only the more simple theorems of the science, but even those abstruse paradoxes which, however they may appear susceptible of demonstration, are at variance with the natural conceptions which the mind, without the aid of philosophy, would be led to entertain upon the subject. The INFINITE DIVISIBILITY of matter, or in other words, the INFINITE divisibility of a FINITE thing, extending even to the minutest atom, is a point agreed among geometricians; though not less incomprehensible to common sense, than any of those mysteries in religion, against which the batteries of infidelity have been so industriously levelled.

But in the sciences of morals and politics, men are found far less tractable. To a certain degree, it is right and useful that this should be the case. Caution and investigation are a necessary armour against error and imposition. But this untractableness may be carried too far, and may degenerate into obstinacy, perverseness, or disingenuity. Though it cannot be pretended, that the principles of moral and political knowledge have, in general, the same degree of certainty with those of the mathematics; yet they have much better claims in this respect, than, to judge from the conduct of men in particular situations, we should be disposed to allow them. The obscurity is much oftener in

the passions and prejudices of the reasoner, than in the subject. Men, upon too many occasions, do not give their own understandings fair play; but yielding to some untoward bias, they entangle themselves in words, and confound themselves in subtleties.

How else could it happen, (if we admit the objectors to be sincere in their opposition,) that positions so clear as those which manifest the necessity of a general power of taxation in the government of the union, should have to encounter any adversaries among men of discernment? Though these positions have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as introductory to an examination of what may have been offered by way of objection to them. They are in substance as follow:

A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible; free from every other control, but a regard to the public good, and to the sense of the people.

As the duties of superintending the national defence, and of securing the public peace against foreign or domestic violence, involve a provision for casualties and dangers, to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation, and the resources of the community.

As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent, must necessarily be comprehended in that of providing for those exigencies.

As theory and practice conspire to prove, that the power of procuring revenue is unavailing, when exercised over the states in their collective capacities, the federal government must of necessity be invested with an unqualified power of taxation in the ordinary modes.

Did not experience evince the contrary, it would be natural to conclude, that the propriety of a general power of taxation, in the national government, might safely be permitted to rest on the evidence of these propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that the antagonists of the proposed constitution, so far from acquiescing in their justness or truth, seem to make their principal and most zealous effort against this part of the plan. It may therefore be satisfactory to analyze the arguments with which they combat it.

Those of them which have been most laboured with that view, seem in substance to amount to this: "It is not true, because the exigencies of the union "may not be susceptible of limitation, that its power "of laying taxes ought to be unconfined. Revenue "is as requisite to the purposes of the local adminis- "trations, as to those of the union; and the former "are at least of equal importance with the latter, to "the happiness of the people. It is therefore as ne- "cessary, that the state governments should be able "to command the means of supplying their wants, "as, that the national government should possess "the like faculty, in respect to the wants of the "union. But an indefinite power of taxation in the "*latter* might, and probably would, in time, deprive "the *former* of the means of providing for their own "necessities; and would subject them entirely to

" the mercy of the national legislature. As the
" laws of the union are to become the supreme law
" of the land; as it is to have power to pass all laws
" that may be NECESSARY for carrying into execution
" the authorities with which it is proposed to vest
" it; the national government might at any time
" abolish the taxes imposed for state objects, upon
" the pretence of an interference with its own. It
" might allege a necessity of doing this, in order to
" give efficacy to the national revenues: And thus
" all the resources of taxation might, by degrees, be-
" come the subjects of federal monopoly, to the en-
" tire exclusion and destruction of the state govern-
" ments."

This mode of reasoning, appears sometimes to turn upon the supposition of usurpation in the national government; at other times, it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light, that it can be admitted to have any pretensions to fairness. The moment we launch into conjectures, about the usurpations of the federal government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure, till it gets bewildered amidst the labyrinths of an enchanted castle, and knows not on which side to turn to escape from the apparitions which itself has raised. Whatever may be the limits, or modifications, of the powers of the union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here what I have observed in substance in another place, that all observations, founded upon the danger

of usurpation, ought to be referred to the composition and structure of the government, not to the nature and extent of its powers. The state governments, by their original constitutions, are invested with complete sovereignty. In what does our security consist against usurpations from that quarter?—Doubtless in the manner of their formation, and in a due dependence of those who are to administer them upon the people. If the proposed construction of the federal government be found, upon an impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all apprehensions on the score of usurpation ought to be discarded.

It should not be forgotten, that a disposition in the state governments, to encroach upon the rights of the union, is quite as probable as a disposition in the union to encroach upon the rights of the state governments. What side would be likely to prevail in such a conflict, must depend on the means which the contending parties could employ towards ensuring success. As in republics, strength is always on the side of the people; and as there are weighty reasons to induce a belief, that the state governments will commonly possess most influence over them, the natural conclusion is, that such contests will be most apt to end to the disadvantage of the union; and that there is greater probability of encroachments by the members upon the federal head, than by the federal head upon the members. But it is evident, that all conjectures of this kind must be extremely vague and fallible; and that it is by far the safest course to lay them altogether aside; and to confine our attention wholly to the nature and extent of the powers, as they are delineated in the

constitution. Every thing beyond this, must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the state governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate the objections, which have been made to an indefinite power of taxation in the United States.

PUBLIUS.

NUMBER XXXII.

BY MR. HAMILTON.

The same Subject continued.

ALTHOUGH I am of opinion that there would be no real danger of the consequences to the state governments, which seem to be apprehended from a power in the union to control them in the levies of money; because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments of the state governments, and a conviction of the utility and necessity of local administrations, for local purposes, would be a complete barrier against the oppressive use of such a power: Yet I am willing here to allow, in its full extent, the justness of the reasoning, which requires that the individual states should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And

making this concession, I affirm that, (with the sole exception of duties on imports and exports,) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its constitution.

An entire consolidation of the states into one complete national sovereignty, would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the state governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States. This exclusive delegation, or rather this alienation of state sovereignty, would only exist in three cases; where the constitution in express terms granted an exclusive authority to the union; where it granted, in one instance, an authority to the union; and in another, prohibited the states from exercising the like authority; and where it granted an authority to the union, to which a similar authority in the states would be absolutely and totally *contradictory* and *repugnant*. I use these terms to distinguish this last case from another which might appear to resemble it; but which would, in fact, be essentially different: I mean where the exercise of a concurrent jurisdiction, might be productive of occasional interferences in the *policy* of any branch of administration, but would not imply any direct contradiction or repugnancy in point of constitutional authority.

These three cases of exclusive jurisdiction in the federal government, may be exemplified by the following instances: The last clause but one in the eighth section of the first article, provides expressly, that congress shall exercise "*exclusive legislation*" over the district to be appropriated as the seat of government. This answers to the first case. The first clause of the same section empowers congress "*to lay and collect taxes, duties, imposts, and excises;*" and the second clause of the tenth section of the same article declares, that, "*no state shall,* without the consent of congress, *lay any imposts or duties on imports or exports,* except for the purpose of executing its inspection laws." Hence would result an exclusive power in the union to lay duties on imports and exports, with the particular exception mentioned; but this power is abridged by another clause, which declares, that no tax or duty shall be laid on articles exported from any state; in consequence of which qualification, it now only extends to the *duties on imports.* This answers to the second case. The third will be found in that clause which declares, that congress shall have power "to establish an UNIFORM RULE of naturalization throughout the United States." This must necessarily be exclusive; because if each state had power to prescribe a DISTINCT RULE, there could be no UNIFORM RULE.

A case which may perhaps be thought to resemble the latter, but which is in fact widely different, affects the question immediately under consideration. I mean the power of imposing taxes on all articles other than exports and imports. This, I contend, is manifestly a concurrent and co-equal authority in the United States, and in the individual states. There

is plainly no expression in the granting clause, which makes that power *exclusive* in the union. There is no independent clause or sentence which prohibits the states from exercising it. So far is this from being the case, that a plain and conclusive argument to the contrary is deducible from the restraint laid upon the states in relation to duties on imports and exports. This restriction implies an admission, that if it were not inserted, the states would possess the power it excludes; and it implies a further admission, that as to all other taxes, the authority of the states remains undiminished. In any other view, it would be both unnecessary and dangerous; it would be unnecessary, because, if the grant to the union of the power of laying such duties, implied the exclusion of the states, or even their subordination in this particular, there could be no need of such a restriction; it would be dangerous, because the introduction of it leads directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors be just, could not have been intended; I mean that the states, in all cases to which the restriction did not apply, would have a concurrent power of taxation with the union. The restriction in question amounts to what lawyers call a NEGATIVE PREGNANT; that is, a *negation* of one thing, and an *affirmance* of another: a negation of the authority of the states to impose taxes on imports and exports, and an affirmance of their authority to impose them on all other articles. It would be mere sophistry to argue, that it was meant to exclude them *absolutely* from the imposition of taxes of the former kind, and to leave them at liberty to lay others *subject to the control* of the national legislature. The restraining or prohibitory clause only says, that they shall not,

without the consent of congress, lay such duties; and if we are to understand this in the sense last mentioned, the constitution would then be made to introduce a formal provision, for the sake of a very absurd conclusion; which is, that the states, *with the consent* of the national legislature, might tax imports and exports; and that they might tax every other article, *unless controlled* by the same body. If this was the intention, why was it not left, in the first instance, to what is alleged to be the natural operation of the original clause, conferring a general power of taxation upon the union? It is evident that this could not have been the intention, and that it will not bear a construction of the kind.

As to a supposition of repugnancy between the power of taxation in the states and in the union, it cannot be supported in that sense which would be requisite to work an exclusion of the states. It is indeed possible, that a tax might be laid on a particular article by a state, which might render it *inexpedient* that a further tax should be laid on the same article by the union; but it would not imply a constitutional inability to impose a further tax. The quantity of the imposition, the expediency or inexpediency of an increase on either side, would be mutually questions of prudence; but there would be involved no direct contradiction of power. The particular policy of the national and of the state system of finance, might now and then not exactly coincide, and might require reciprocal forbearances. It is not, however, a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy, that can by implication alienate and extinguish a pre-existing right of sovereignty.

The necessity of a concurrent jurisdiction in certain cases, results from the division of the sovereign power; and the rule that all authorities, of which the states are not explicitly divested in favour of the union, remain with them in full vigour, is not only a theoretical consequence of that division, but is clearly admitted by the whole tenour of the instrument which contains the articles of the proposed constitution. We there find, that notwithstanding the affirmative grants of general authorities, there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the states, to insert negative clauses, prohibiting the exercise of them by the states. The tenth section of the first article consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the act, which justifies the position I have advanced, and refutes every hypothesis to the contrary.

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NUMBER XXXIII.

BY MR. HAMILTON.

The same Subject continued.

THE residue of the argument against the provisions of the constitution, in respect to taxation, is ingrafted upon the following clauses: The last clause of the eighth section of the first article, authorizes the national legislature "to make all laws which shall be

" *necessary* and *proper*, for carrying into execution
" *the powers* by that constitution vested in the go-
" vernment of the United States, or in any depart-
" ment or officer thereof;" and the second clause of the sixth article declares, that " the constitution and
" the laws of the United States made *in pursuance*
" *thereof*, and the treaties made by their authority,
" shall be the *supreme law* of the land; any thing
" in the constitution or laws of any state to the con-
" trary notwithstanding."

These two clauses have been the sources of much virulent invective, and petulant declamation, against the proposed constitution; they have been held up to the people in all the exaggerated colours of misrepresentation, as the pernicious engines by which their local governments were to be destroyed, and their liberties exterminated—as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this clamour, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence, that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth, which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers. This is so clear a proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity.

What is a power, but the ability or faculty of

doing a thing? What is the ability to do a thing, but the power of employing the *means* necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the *means* to execute a LEGISLATIVE power, but LAWS? What is the power of laying and collecting taxes, but a *legislative power*, or a power of *making laws*, to lay and collect taxes? What are the proper means of executing such a power, but *necessary* and *proper* laws?

This simple train of inquiry furnishes us at once with a test of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes, must be a power to pass all laws *necessary* and *proper* for the execution of that power: and what does the unfortunate and calumniated provision in question do, more than declare the same truth; to wit, that the national legislature to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws *necessary* and *proper* to carry it into effect? I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the union. But the same process will lead to the same result, in relation to all other powers declared in the constitution. And it is *expressly* to execute these powers, that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all *necessary* and *proper* laws. If there be any thing exceptionable, it must be sought for in the specific powers, upon which this general declaration is predicated. The declaration itself,

though it may be chargeable with tautology or redundancy, is at least perfectly harmless.

But SUSPICION may ask, why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the union. The convention probably foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most threatens our political welfare, is, that the state governments will finally sap the foundations of the union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction.—Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare.

But it may be again asked, who is to judge of the *necessity* and *propriety* of the laws to be passed for executing the powers of the union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers, as upon the declaratory clause: and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers; and its constituents in the last. If the federal government should overpass the just bounds of its authority, and make a tyrannical use of its powers; the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the constitution, as the exigency may suggest and prudence jus-

tify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced construction of its authority, (which indeed cannot easily be imagined,) the federal legislature should attempt to vary the law of descent in any state; would it not be evident, that in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the state? Suppose, again, that upon the pretence of an interference with its revenues, it should undertake to abrogate a land tax, imposed by the authority of a state; would it not be equally evident, that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which the constitution plainly supposes to exist in the state governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners, who, in the imprudent zeal of their animosity to the plan of the convention, have laboured to envelope it in a cloud, calculated to obscure the plainest and simplest truths.

But it is said, that the laws of the union are to be the *supreme law* of the land. What inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy. It is a rule, which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies,

and the individuals of whom they are composed. It would otherwise be a mere treaty, dependant on the good faith of the parties, and not a government; which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow from this doctrine, that acts of the larger society, which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive, that the clause which declares the supremacy of the laws of the union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it *expressly* confines this supremacy to laws made *pursuant to the constitution;* which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.

Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controlled; yet, a law abrogating or preventing the collection of a tax laid by the authority of a state, (unless upon imports and exports,) would not be the supreme law of the land, but an usurpation of a power not granted by the constitution. As far as an improper accumulation of taxes, on the same object, might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or

the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interests would dictate a concert in this respect, which would avoid any material inconvenience. The inference from the whole is—that the individual states would, under the proposed constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper, that this *concurrent jurisdiction* in the article of taxation, was the only admissible substitute for an entire subordination, in respect to this branch of power, of state authority to that of the union.

PUBLIUS.

NUMBER XXXIV.

BY MR. HAMILTON.

The same Subject continued.

I FLATTER myself it has been clearly shown in my last number, that the particular states, under the proposed constitution, would have CO-EQUAL authority with the union in the article of revenue, except as to duties on imports. As this leaves open to the states far the greatest part of the resources of the community, there can be no colour for the assertion, that they would not possess means as abundant as could be desired for the supply of their own wants,

independent of all external control. That the field is sufficiently wide, will more fully appear, when we come to develope the inconsiderable share of the public expenses, for which it will fall to the lot of the state government to provide.

To argue upon abstract principles, that this co-ordinate authority cannot exist, would be to set up theory and supposition against fact and reality. However proper such reasonings might be, to show that a thing *ought not to exist*, they are wholly to be rejected, when they are made use of to prove that it does not exist, contrary to the evidence of the fact itself. It is well known, that in the Roman republic the legislative authority, in the last resort, resided for ages in two different political bodies; not as branches of the same legislature, but as distinct and independent legislatures; in each of which an opposite interest prevailed; in one, the Patrician; in the other, the Plebeian. Many arguments might have been adduced, to prove the unfitness of two such seemingly contradictory authorities, each having power to *annul* or *repeal* the acts of the other. But a man would have been regarded as frantic, who should have attempted at Rome to disprove their existence. It will readily be understood, that I allude to the COMITIA CENTURIATA and the COMITIA TRIBUTIA. The former, in which the people voted by centuries, was so arranged as to give a superiority to the Patrician interest: In the latter, in which numbers prevailed, the Plebeian interests had an entire predominancy. And yet these two legislatures co-existed for ages, and the Roman republic attained to the pinnacle of human greatness.

In the case particularly under consideration, there is no such contradiction as appears in the example

cited; there is no power on either side to annul the acts of the other. And in practice, there is little reason to apprehend any inconvenience; because, in a short course of time, the wants of the states will naturally reduce themselves within *a very narrow compass;* and in the interim, the United States will, in all probability, find it convenient to abstain wholly from those objects to which the particular states would be inclined to resort.

To form a more precise judgment of the true merits of this question, it will be well to advert to the proportion between the objects that will require a federal provision in respect to revenue, and those which will require a state provision. We shall discover that the former are altogether unlimited; and that the latter are circumscribed within very moderate bounds. In pursuing this inquiry, we must bear in mind, that we are not to confine our view to the present period, but to look forward to remote futurity. Constitutions of civil government, are not to be framed upon a calculation of existing exigencies; but upon a combination of these, with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious, than to infer the extent of any power proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies, as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity. It is true, perhaps, that a computation might be made, with sufficient accuracy to answer the purpose, of the quantity of revenue requisite to discharge the subsisting engagements of the union, and to main-

tain those establishments, which, for some time to come, would suffice in time of peace. But would it be wise, or would it not rather be the extreme of folly, to stop at this point, and to leave the government intrusted with the care of the national defence, in a state of absolute incapacity to provide for the protection of the community, against future invasions of the public peace, by foreign war or domestic convulsions? If we must be obliged to exceed this point, where can we stop short of an indefinite power of providing for emergencies as they may arise? Though it be easy to assert, in general terms, the possibility of forming a rational judgment of a due provision against probable dangers; yet we may safely challenge those who make the assertion, to bring forward their data, and may affirm, that they would be found as vague and uncertain as any that could be produced to establish the probable duration of the world. Observations, confined to the mere prospects of internal attacks, can deserve no weight; though even these will admit of no satisfactory calculations: But if we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy, and of naval wars, would involve contingencies that must baffle all the efforts of political arithmetic.

Admitting that we ought to try the novel and absurd experiment in politics, of tying up the hands of government from offensive war, founded upon reasons of state; yet, certainly, we ought not to disable it from guarding the community against the ambition or enmity of other nations. A cloud has been for some time hanging over the European world. If it should break forth into a storm, who can ensure

us, that in its progress, a part of its fury would not be spent upon us? No reasonable man would hastily pronounce that we are entirely out of its reach. Or if the combustible materials that now seem to be collecting, should be dissipated without coming to maturity; or if a flame should be kindled without extending to us; what security can we have that our tranquillity will long remain undisturbed from some other cause, or from some other quarter? Let us recollect, that peace or war will not always be left to our option: that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition, of others. Who could have imagined, at the conclusion of the last war, that France and Britain, wearied and exhausted as they both were, would already have looked with so hostile an aspect upon each other? To judge from the history of mankind, we shall be compelled to conclude, that the fiery and destructive passions of war reign in the human breast with much more powerful sway, than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquillity, would be to calculate on the weaker springs of the human character.

What are the chief sources of expense in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answer plainly is, wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society. The expenses arising from those institutions which relate to the mere domestic police of a state, to the support of its legislative, executive, and judiciary departments,

with their different appendages, and to the encouragement of agriculture and manufactures, (which will comprehend almost all the objects of state expenditure,) are insignificant in comparison with those which relate to the national defence.

In the kingdom of Great-Britain, where all the ostentatious apparatus of monarchy is to be provided for, not above a fifteenth part of the annual income of the nation is appropriated to the class of expenses last mentioned; the other fourteen-fifteenths are absorbed in the payment of the interest of debts, contracted for carrying on the wars in which that country has been engaged, and in the maintenance of fleets and armies. If, on the one hand, it should be observed, that the expenses incurred in the prosecution of the ambitious enterprises and vain-glorious pursuits of a monarchy, are not a proper standard by which to judge of those which might be necessary in a republic; it ought, on the other hand, to be remarked, that there should be as great a disproportion, between the profusion and extravagance of a wealthy kingdom in its domestic administration, and the frugality and economy, which, in that particular, become the modest simplicity of republican government. If we balance a proper deduction from one side, against that which it is supposed ought to be made from the other, the proportion may still be considered as holding good.

But let us take a view of the large debt which we have ourselves contracted in a single war, and let us only calculate on a common share of the events which disturb the peace of nations; and we shall instantly perceive, without the aid of any elaborate illustration, that there must always be an immense disproportion between the objects of federal and

state expenditure. It is true, that several of the states, separately, are encumbered with considerable debts, which are an excrescence of the late war. But this cannot happen again, if the proposed system be adopted; and when these debts are discharged, the only call for revenue of any consequence, which the state governments will continue to experience, will be for the mere support of their respective civil lists; to which, if we add all contingencies, the total amount in every state, ought to fall considerably short of a million of dollars.

If it cannot be denied to be a just principle, that in framing a constitution of government for a nation, we ought, in those provisions which are designed to be permanent, to calculate, not on temporary, but on permanent causes of expense; our attention would be directed to a provision in favour of the state governments, for an annual sum of about 1,000,000 of dollars; while the exigencies of the union could be susceptible of no limits, even in imagination. In this view of the subject, by what logic can it be maintained, that the local governments ought to command, in perpetuity, an *exclusive* source of revenue for any sum beyond that which has been stated? To extend its power further, in *exclusion* of the authority of the union, would be to take the resources of the community out of those hands which stood in need of them for the public welfare, in order to put them into other hands, which could have no just or proper occasion for them.

Suppose, then, the convention had been inclined to proceed upon the principle of a repartition of the objects of revenue, between the union and its members, in *proportion* to their comparative necessities; what particular fund could have been selected

for the use of the states, that would not either have been too much or too little; too little for their present, too much for their future wants? As to the line of separation between external and internal taxes, this would leave to the states, at a rough computation, the command of two thirds of the resources of the community, to defray from a tenth to a twentieth of its expenses; and to the union, one third of the resources of the community, to defray from nine tenths to nineteen twentieths of its expenses. If we desert this boundary, and content ourselves with leaving to the states an exclusive power of taxing houses and lands, there would still be a great disproportion between the *means* and the *end;* the possession of one third of the resources of the community, to supply, at most, one tenth of its wants. If any fund could have been selected and appropriated, equal to and not greater than the object, it would have been inadequate to the discharge of the existing debts of the particular states, and would have left them dependent on the union for a provision for this purpose.

The preceding train of observations, will justify the position which has been elsewhere laid down, that "A CONCURRENT JURISDICTION in the article of "taxation, was the only admissible substitute for an "entire subordination, in respect to this branch of "power, of state authority to that of the union." Any separation of the objects of revenue that could have been fallen upon, would have amounted to a sacrifice of the great INTERESTS of the union, to the POWER of the individual states. The convention thought the concurrent jurisdiction preferable to that subordination; and it is evident, that it has at least the merit of reconciling an indefinite consti-

tutional power of taxation in the federal government, with an adequate and independent power in the states, to provide for their own necessities. There remain a few other lights, in which this important subject of taxation will claim a further consideration.

PUBLIUS.

NUMBER XXXV.

BY MR. HAMILTON.

The same Subject continued.

BEFORE we proceed to examine any other objections to an indefinite power of taxation in the union, I shall make one general remark; which is, that if the jurisdiction of the national government, in the article of revenue, should be restricted to particular objects, it would naturally occasion an undue proportion of the public burthens to fall upon those objects. Two evils would spring from this source—the oppression of particular branches of industry, and an unequal distribution of the taxes, as well among the several states, as among the citizens of the same state.

Suppose, as has been contended for, the federal power of taxation were to be confined to duties on imports; it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend these duties to an injurious excess. There are persons who imagine that this can never be the case; since the

higher they are, the more it is alleged they will tend to discourage an extravagant consumption, to produce a favourable balance of trade, and to promote domestic manufactures. But all extremes are pernicious in various ways. Exorbitant duties on imported articles, serve to beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself: They tend to render other classes of the community tributary, in an improper degree, to the manufacturing classes, to whom they give a premature monopoly of the markets: They sometimes force industry out of its most natural channels into others, in which it flows with less advantage. And, in the last place, they oppress the merchant, who is often obliged to pay them himself, without any retribution from the consumer. When the demand is equal to the quantity of goods at market, the consumer generally pays the duty; but when the markets happen to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his profits, but breaks in upon his capital. I am apt to think, that a division of the duty, between the seller and the buyer, more often happens than is commonly imagined. It is not always possible to raise the price of a commodity, in exact proportion to every additional imposition laid upon it. The merchant, especially in a country of small commercial capital, is often under a necessity of keeping prices down, in order to a more expeditious sale.

The maxim, that the consumer is the payer, is so much oftener true than the reverse of the proposition, that it is far more equitable that the duties on imports should go into a common stock, than that they should redound to the exclusive benefit of

the importing states. But it is not so generally true, as to render it equitable, that those duties should form the only national fund. When they are paid by the merchant, they operate as an additional tax upon the importing state; whose citizens pay their proportion of them in the character of consumers. In this view, they are productive of inequality among the states; which inequality would be increased with the increased extent of the duties. The confinement of the national revenues to this species of imposts, would be attended with inequality, from a different cause, between the manufacturing and the non-manufacturing states. The states which can go furthest towards the supply of their own wants, by their own manufactures, will not, according to their numbers or wealth, consume so great a proportion of imported articles, as those states which are not in the same favourable situation; they would not, therefore, in this mode alone, contribute to the public treasury in a ratio to their abilities. To make them do this, it is necessary that recourse be had to excises; the proper objects of which are particular kinds of manufactures. New-York is more deeply interested in these considerations, than such of her citizens, as contend for limiting the power of the union to external taxation, may be aware of. New-York is an importing state, and from a greater disproportion between her population and territory, is less likely, than some other states, speedily to become in any considerable degree a manufacturing state. She would of course suffer, in a double light, from restraining the jurisdiction of the union to commercial imposts.

So far as these observations tend to inculcate a danger of the import duties being extended to an injurious extreme, it may be observed, conformably to

a remark made in another part of these papers, that the interest of the revenue itself would be a sufficient guard against such an extreme. I readily admit that this would be the case, as long as other resources were open; but if the avenues to them were closed, HOPE, stimulated by necessity, might beget experiments, fortified by rigorous precautions and additional penalties; which, for a time, might have the intended effect, till there had been leisure to contrive expedients to elude these new precautions. The first success would be apt to inspire false opinions; which it might require a long course of subsequent experience to correct. Necessity, especially in politics, often occasions false hopes, false reasonings, and a system of measures correspondently erroneous. But even if this supposed excess should not be a consequence of the limitation of the federal power of taxation, the inequalities spoken of would still ensue, though not in the same degree, from the other causes that have been noticed. Let us now return to the examination of objections.

One which, if we may judge from the frequency of its repetition, seems most to be relied on, is, that the house of representatives is not sufficiently numerous for the reception of all the different classes of citizens; in order to combine the interests and feelings of every part of the community, and to produce a due sympathy between the representative body and its constituents. This argument presents itself under a very specious and seducing form; and is well calculated to lay hold of the prejudices of those to whom it is addressed. But when we come to dissect it with attention, it will appear to be made up of nothing but fair sounding words. The object it seems to aim at, is in the first place imprac-

ticable, and in the sense in which it is contended for, is unnecessary. I reserve for another place, the discussion of the question which relates to the sufficiency of the representative body in respect to numbers; and shall content myself with examining here the particular use which has been made of a contrary supposition, in reference to the immediate subject of our inquiries.

The idea of an actual representation of all classes of the people, by persons of each class, is altogether visionary. Unless it were expressly provided in the constitution, that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants, in preference to persons of their own professions or trades. Those discerning citizens are well aware, that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them, indeed, are immediately connected with the operations of commerce. They know that the merchant is their natural patron and friend; and they are aware, that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchant than by themselves. They are sensible that their habits of life have not been such as to give them those acquired endowments, without which, in a deliberate assembly, the greatest natural abilities are for the most part useless; and that the influence and weight, and superior acquirements of the merchants, render them more equal to a contest with any spirit which might happen to infuse itself into the public councils, unfriendly to the manufacturing and trading interests.

These considerations, and many others that might be mentioned, prove, and experience confirms it, that artizans and manufacturers, will commonly be disposed to bestow their votes upon merchants and those whom they recommend. We must therefore consider merchants as the natural representatives of all these classes of the community.

With regard to the learned professions, little need be observed; they truly form no distinct interest in society; and according to their situation and talents, will be indiscriminately the objects of the confidence and choice of each other, and of other parts of the community.

Nothing remains but the landed interest; and this, in a political view, and particularly in relation to taxes, I take to be perfectly united, from the wealthiest landlord, down to the poorest tenant. No tax can be laid on land which will not affect the proprietor of thousands of acres, as well as the proprietor of a single acre. Every land-holder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if we even could suppose a distinction of interests between the opulent land-holder and the middling farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number, than in the assembly, which is composed of a greater number.—Where the qualifications of the electors are the same, whether they have to choose a small or a large num-

ber, their votes will fall upon those in whom they have most confidence; whether these happen to be men of large fortunes, or of moderate property, or of no property at all.

It is said to be necessary that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of land-holders, merchants, and men of the learned professions. But where is the danger that the interests and feelings of the different classes of citizens will not be understood, or attended to by these three descriptions of men? Will not the landholder know and feel whatever will promote or injure the interests of landed property? And will he not, from his own interest in that species of property, be sufficiently prone to resist every attempt to prejudice or encumber it? Will not the merchant understand and be disposed to cultivate, as far as may be proper, the interests of the mechanic and manufacturing arts, to which his commerce is so nearly allied? Will not the man of the learned profession, who will feel a neutrality to the rivalships among the different branches of industry, be likely to prove an impartial arbiter between them, ready to promote either, so far as it shall appear to him conducive to the general interests of the community.

If we take into the account the momentary humours or dispositions which may happen to prevail in particular parts of the society, and to which a wise

administration will never be inattentive, is the man whose situation leads to extensive inquiry and information less likely to be a competent judge of their nature, extent, and foundation, than one whose observation does not travel beyond the circle of his neighbours and acquaintances? Is it not natural that a man who is a candidate for the favour of the people, and who is dependent on the suffrages of his fellow-citizens for the continuance of his public honours, should take care to inform himself of their dispositions and inclinations, and should be willing to allow them their proper degree of influence upon his conduct? This dependence, and the necessity of being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they are the strong cords of sympathy between the representative and the constituent.

There is no part of the administration of government that requires extensive information, and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best, will be least likely to resort to oppressive expedients, or to sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burthensome. There can be no doubt that, in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it is, should be acquainted with the general genius, habits, and modes of thinking, of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense, the proposition has either

no meaning, or an absurd one. And in that sense, let every considerate citizen judge for himself, where the requisite qualification is most likely to be found.

PUBLIUS.

NUMBER XXXVI.

BY MR. HAMILTON.

The same Subject continued.

WE have seen that the result of the observations, to which the foregoing number has been principally devoted, is, that from the natural operation of the different interests and views of the various classes of the community, whether the representation of the people be more or less numerous, it will consist almost entirely of proprietors of land, of merchants, and of members of the learned professions, who will truly represent all those different interests and views. If it should be objected, that we have seen other descriptions of men in the local legislatures; I answer, that it is admitted there are exceptions to the rule, but not in sufficient number to influence the general complexion or character of the government. There are strong minds in every walk of life, that will rise superior to the disadvantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from the society in general. The door ought to be equally open to all; and I trust, for the

credit of human nature, that we shall see examples of such vigorous plants flourishing in the soil of federal, as well as of state legislation; but occasional instances of this sort, will not render the reasoning, founded upon the general course of things, less conclusive.

The subject might be placed in several other lights, that would all lead to the same result; and in particular it might be asked, what greater affinity or relation of interest can be conceived between the carpenter and blacksmith, and the linen manufacturer or stocking weaver, than between the merchant and either of them? It is notorious, that there are often as great rivalships between different branches of the mechanic or manufacturing arts, as there are between any of the departments of labour and industry; so that unless the representative body were to be far more numerous, than would be consistent with any idea of regularity or wisdom in its deliberation, it is impossible that what seems to be the spirit of the objection we have been considering, should ever be realized in practice. But I forbear to dwell longer on a matter, which has hitherto worn too loose a garb to admit even of an accurate inspection of its real shape or tendency.

There is another objection of a somewhat more precise nature, which claims our attention. It has been asserted that a power of internal taxation in the national legislature, could never be exercised with advantage, as well from the want of a sufficient knowledge of local circumstances, as from an interference between the revenue laws of the union, and of the particular states. The supposition of a want of proper knowledge, seems to be entirely destitute of foundation. If any question is depending in a

state legislature, respecting one of the counties, which demands a knowledge of local details, how is it acquired? No doubt, from the information of the members of the county. Cannot the like knowledge be obtained in the national legislature, from the representatives of each state? And is it not to be presumed, that the men who will generally be sent there, will be possessed of the necessary degree of intelligence, to be able to communicate that information? Is the knowledge of local circumstances, as applied to taxation, a minute topographical acquaintance with all the mountains, rivers, streams, highways, and by-paths in each state? Or is it a general acquaintance with its situation, and resources—with the state of its agriculture, commerce, manufactures—with the nature of its products and consumptions—with the different degrees and kinds of its wealth, property, and industry?

Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men, or to boards composed of a few individuals, who digest and prepare, in the first instance, the plans of taxation; which are afterwards passed into law by the authority of the sovereign or legislature. Inquisitive and enlightened statesmen, are every where deemed best qualified, to make a judicious selection of the objects proper for revenue: which is a clear indication, as far as the sense of mankind can have weight in the question, of the species of knowledge of local circumstances, requisite to the purposes of taxation.

The taxes intended to be comprised under the general denomination of internal taxes, may be subdivided into those of the *direct* and those of the *in-*

direct kind. Though the objection be made to both, yet the reasoning upon it seems to be confined to the former branch. And indeed as to the latter, by which must be understood duties and excises on articles of consumption, one is at a loss to conceive, what can be the nature of the difficulties apprehended. The knowledge relating to them, must evidently be of a kind that will either be suggested by the nature of the article itself, or can easily be procured from any well-informed man, especially of the mercantile class. The circumstances that may distinguish its situation in one state, from its situation in another, must be few, simple, and easy to be comprehended. The principal thing to be attended to, would be to avoid those articles which had been previously appropriated to the use of a particular state; and there could be no difficulty in ascertaining the revenue system of each. This could always be known from the respective codes of laws, as well as from the information of the members of the several states.

The objection, when applied to real property, or to houses and lands, appears to have, at first sight, more foundation; but even in this view, it will not bear a close examination. Land taxes are commonly laid in one of two modes, either by *actual* valuations, permanent or periodical, or by occasional assessments, at the discretion, or according to the best judgment of certain officers, whose duty it is to make them. In either case, the EXECUTION of the business, which alone requires the knowledge of local details, must be confided to discreet persons in the character of commissioners or assessors, elected by the people, or appointed by the government for the purpose. All that the law can do, must be to

name the persons, or to prescribe the manner of their election or appointment, to fix their numbers and qualifications; and to draw the general outlines of their powers and duties. And what is there in all this, that cannot as well be performed by the national legislature, as by the state legislature? The attention of either, can only reach to general principles; local details, as already observed, must be referred to those who are to execute the plan.

But there is a simple point of view, in which this matter may be placed, that must be altogether satisfactory. The national legislature can make use of the *system of each state within that state.* The method of laying and collecting this species of taxes in each state, can, in all its parts, be adopted and employed by the federal government.

Let it be recollected, that the proportion of these taxes is not to be left to the discretion of the national legislature: but it is to be determined by the numbers of each state, as described in the second section of the first article. An actual census, or enumeration of the people, must furnish the rule; a circumstance which effectually shuts the door to partiality or oppression. The abuse of this power of taxation seems to have been provided against with guarded circumspection. In addition to the precaution just mentioned, there is a provision that "all "duties, imposts, and excises, shall be UNIFORM "throughout the United States."

It has been very properly observed, by different speakers and writers on the side of the constitution, that if the exercise of the power of internal taxation by the union, should be judged beforehand upon mature consideration, or should be discovered on experiment, to be really inconvenient, the fede-

ral government may forbear the use of it, and have recourse to requisitions in its stead. By way of answer to this, it has been triumphantly asked, why not in the first instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be given; the first is, that the actual exercise of the power, may be found both *convenient* and *necessary;* for it is impossible to prove in theory, or otherwise than by the experiment, that it cannot be advantageously exercised. The contrary, indeed, appears most probable. The second answer is, that the existence of such a power in the constitution, will have a strong influence in giving efficacy to requisitions. When the states know that the union can supply itself without their agency, it will be a powerful motive for exertion on their part.

As to the interference of the revenue laws of the union, and of its members, we have already seen that there can be no clashing or repugnancy of authority. The laws cannot, therefore, in a legal sense, interfere with each other; and it is far from impossible to avoid an interference even in the policy of their different systems. An effectual expedient for this purpose will be, mutually to abstain from those objects which either side may have first had recourse to. As neither can *control* the other, each will have an obvious and sensible interest in this reciprocal forbearance. And where there is an *immediate* common interest, we may safely count upon its operation. When the particular debts of the states are done away, and their expenses come to be limited within their natural compass, the possibility almost of interference will vanish. A small land tax will answer the purpose of the states, and will be their most simple, and most fit resource.

Many spectres have been raised out of this power of internal taxation, to excite the apprehensions of the people—double sets of revenue officers—a duplication of their burthens by double taxations, and the frightful forms of odious and oppressive poll-taxes, have been played off with all the ingenious dexterity of political legerdemain.

As to the first point, there are two cases in which there can be no room for double sets of officers; one, where the right of imposing the tax is exclusively vested in the union, which applies to the duties on imports: the other, where the object has not fallen under any state regulation or provision, which may be applicable to a variety of objects. In other cases, the probability is, that the United States will either wholly abstain from the objects pre-occupied for local purposes, or will make use of the state officers, and state regulations, for collecting the additional imposition. This will best answer the views of revenue, because it will save expense in the collection, and will best avoid any occasion of disgust to the state governments and to the people. At all events, here is a practicable expedient for avoiding such an inconvenience; and nothing more can be required than to show, that evils predicted do not necessarily result from the plan.

As to any argument derived from a supposed system of influence, it is a sufficient answer to say, that it ought not to be presumed; but the supposition is susceptible of a more precise answer. If such a spirit should infest the councils of the union, the most certain road to the accomplishment of its aim would be, to employ the state officers as much as possible, and to attach them to the union by an accumulation of their emoluments. This would serve to turn the

tide of state influence into the channels of the national government, instead of making federal influence flow in an opposite and adverse current. But all suppositions of this kind are invidious, and ought to be banished from the consideration of the great question before the people. They can answer no other end than to cast a mist over the truth.

As to the suggestion of double taxation, the answer is plain. The wants of the union are to be supplied in one way or another; if by the authority of the federal government, then it will not remain to be done by that of the state governments. The quantity of taxes to be paid by the community, must be the same in either case; with this advantage, if the provision is to be made by the union—that the capital resource of commercial imposts, which is the most convenient branch of revenue, can be prudently improved to a much greater extent under federal, than under state regulation; and of course will render it less necessary to recur to more inconvenient methods: and with this further advantage, that as far as there may be any real difficulty in the exercise of the power of internal taxation, it will impose a disposition to greater care in the choice and arrangement of the means; and must naturally tend to make it a fixed point of policy in the national administration, to go as far as may be practicable in making the luxury of the rich tributary to the public treasury, in order to diminish the necessity of those impositions, which might create dissatisfaction in the poorer and most numerous classes of the society. Happy it is when the interest which the government has in the preservation of its own power, coincides with a proper distribution of the public

burthens, and tends to guard the least wealthy part of the community from oppression!

As to pole taxes, I, without scruple, confess my disapprobation of them; and though they have prevailed from an early period in those states * which have uniformly been the most tenacious of their rights, I should lament to see them introduced into practice under the national government. But does it follow, because there is a power to lay them, that they will actually be laid? Every state in the union has power to impose taxes of this kind; and yet in several of them they are unknown in practice. Are the state governments to be stigmatized as tyrannies, because they possess this power? If they are not, with what propriety can the like power justify such a charge against the national government, or even be urged as an obstacle to its adoption? As little friendly as I am to the species of imposition, I still feel a thorough conviction, that the power of having recourse to it, ought to exist in the federal government. There are certain emergencies of nations, in which expedients, that in the ordinary state of things ought to be foreborn, become essential to the public weal. And the government, from the possibility of such emergencies, ought ever to have the option of making use of them. The real scarcity of objects in this country, which may be considered as productive sources of revenue, is a reason peculiar to itself, for not abridging the discretion of the national councils in this respect. There may exist certain critical and tempestuous conjunctures of the state, in which a pole tax may become an inestimable resource. And as I know nothing to exempt

* The New-England states.

this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defence and security.

I have now gone through the examination of those powers, proposed to be conferred upon the federal government, which relate more peculiarly to its energy, and to its efficiency for answering the great and primary objects of union. There are others which, though omitted here, will, in order to render the view of the subject more complete, be taken notice of under the next head of our inquiries. I flatter myself the progress already made, will have sufficed to satisfy the candid and judicious part of the community, that some of the objections which have been most strenuously urged against the constitution, and which were most formidable in their first appearance, are not only destitute of substance, but if they had operated in the formation of the plan, would have rendered it incompetent to the great ends of public happiness and national prosperity. I equally flatter myself, that a further and more critical investigation of the system, will serve to recommend it still more to every sincere and disinterested advocate for good government; and will leave no doubt with men of this character, of the propriety and expediency of adopting it. Happy will it be for ourselves, and most honourable for human nature, if we have wisdom and virtue enough, to set so glorious an example to mankind.

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NUMBER XXXVII.

BY MR. MADISON.

Concerning the Difficulties which the Convention must have experienced in the formation of a proper Plan.

IN reviewing the defects of the existing confederation, and showing that they cannot be supplied by a government of less energy than that before the public, several of the most important principles of the latter fell of course under consideration. But as the ultimate object of these papers is, to determine clearly and fully the merits of this constitution, and the expediency of adopting it, our plan cannot be completed without taking a more critical and thorough survey of the work of the convention; without examining it on all its sides; comparing it in all its parts, and calculating its probable effects.

That this remaining task may be executed under impressions conducive to a just and fair result, some reflections must in this place be indulged, which candour previously suggests.

It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation, which is essential to a just estimate of their real tendency to advance or obstruct the public good; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. To those who have been led by experince to attend to

this consideration, it could not appear surprising, that the act of the convention which recommends so many important changes and innovations, that may be viewed in so many lights and relations, and which touches the springs of so many passions and interests, should find or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits. In some, it has been too evident from their own publications, that they have scanned the proposed constitution, not only with a predisposition to censure, but with a predetermination to condemn; as the language held by others, betrays an opposite predetermination or bias, which must render their opinions also of little moment in the question. In placing, however, these different characters on a level, with respect to the weight of their opinions, I wish not to insinuate that there may not be a material difference in the purity of their intentions. It is but just to remark in favour of the latter description, that as our situation is universally admitted to be peculiarly critical, and to require indispensably, that something should be done for our relief, the predetermined patron of what has been actually done, may have taken his bias from the weight of these considerations, as well as from considerations of a sinister nature. The predetermined adversary, on the other hand, can have been governed by no venial motive whatever. The intentions of the first may be upright, as they may on the contrary be culpable. The views of the last cannot be upright, and must be culpable. But the truth is, that these papers are not addressed to persons falling under either of these descriptions. They solicit the attention of those only, who add to a sin-

cere zeal for the happiness of their country, a temper favourable to a just estimate of the means of promoting it.

Persons of this character will proceed to an examination of the plan submitted by the convention, not only without a disposition to find or to magnify faults; but will see the propriety of reflecting, that a faultless system was not to be expected. Nor, will they barely make allowances for the errors which may be chargeable on the fallibility to which the convention, as a body of men, were liable; but will keep in mind, that they themselves also are but men, and ought not to assume an infallibility in rejudging the fallible opinions of others.

With equal readiness will it be perceived, that besides these inducements to candour, many allowances ought to be made, for the difficulties inherent in the very nature of the undertaking referred to the convention.

The novelty of that undertaking immediately strikes us. It has been shown in the course of these papers, that the existing confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it, the superstructure resting thereon. It has been shown, that the other confederacies which could be consulted as precedents, have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own;

and to provide a convenient mode of rectifying those which future experience might unfold.

Among the difficulties encountered by the convention, a very important one must have lain, in combining the requisite stability and energy in government, with the inviolable attention due to liberty, and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public: Yet, that it could not be easily accomplished, will be denied by no one, who is unwilling to betray his ignorance of the subject. Energy in government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good government. Stability in government, is essential to national character, and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself, than it is odious to the people; and it may be pronounced with assurance, that the people of this country, enlightened as they are with regard to the nature, and interested, as the great body of them are, in the effects of good government, will never be satisfied, till some remedy be applied to the vicissitudes and uncertainties, which characterize the state administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. The genius of republican liberty, seems to demand on one side, not only that

all power should be derived from the people; but that those intrusted with it should be kept in dependence on the people, by a short duration of their appointments; and that, even during this short period, the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires that the hands in which power is lodged, should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures, from a frequent change of men; whilst energy in government requires not only a certain duration of power, but the execution of it by a single person.

How far the convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory one here taken, it must clearly appear to have been an arduous part.

Not less arduous must have been the task of marking the proper line of partition, between the authority of the general, and that of the state governments. Every man will be sensible of this difficulty, in proportion as he has been accustomed to contemplate and discriminate objects, extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated, by such delicate shades and minute gradations, that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdoms of nature and still more, between the va-

ficus provinces and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded, in tracing with certainty, the line which separates the district of vegetable life, from the neighbouring region of unorganized matter, or which marks the termination of the former, and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters, by which the objects in each of these great departments of nature have been arranged and assorted.

When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us, that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the legislative, executive, and judiciary; or even the privileges and the powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity that reigns over these subjects, and which puzzles the greatest adepts in political science.

The experience of ages, with the continued and combined labours of the most enlightened legislators and jurists, have been equally unsuccessful in delineating the several objects and limits of different codes of laws, and different tribunals of justice. The

precise extent of the common law, the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remain still to be clearly and finally established in Great-Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, &c. is not less a source of frequent and intricate discussions, sufficiently denoting the indeterminate limits by which they are respectively circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other, adds a fresh embarrassment. The use of words is to express ideas. Perspicuity therefore requires, not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriated to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many, equivocally denoting different ideas. Hence it must happen, that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate, by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and

novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful, by the cloudy medium through which it is communicated.

Here then are three sources of vague and incorrect definitions; indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and state jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller states. We cannot err, in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose, that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the government, and to the distribution of its powers, as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the constitution which warrant each of these suppositions; and as far as either of them is well founded, it shows that the convention must have been compelled to sacrifice

theoretical propriety, to the force of extraneous considerations.

Nor could it have been the large and small states only, which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every state may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies; so the different parts of the United States are distinguished from each other, by a variety of circumstances, which produce a like effect on a larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the government when formed; yet every one must be sensible of the contrary influence, which must have been experienced in the task of forming it.

Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a constitution planned in his closet, or in his imagination? The real wonder is, that so many difficulties should have been surmounted; and surmounted with an unanimity almost as unprecedented, as it must have been unexpected. It is impossible for any man of candour to reflect on this circumstance, without partaking of the astonishment. It is impossible, for the man of pious reflection, not to perceive in it the finger of that Almighty Hand, which has been so frequently and signally

extended to our relief in the critical stages of the revolution.

We had occasion in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands, for reforming the baneful and notorious vices of their constitution. The history of almost all the great councils and consultations, held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures, which display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect with which they are contrasted. In revolving the cause from which these exceptions result, and applying them to the particular instance before us, we are necessarily led to two important conclusions. The first is, that the convention must have enjoyed in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is, that all the deputations composing the convention, were either satisfactorily accommodated by the final act; or were induced to accede to it, by a deep conviction of the necessity of sacrificing private opinions and partial interests, to the public good; and by a despair of seeing this necessity diminished by delays or by new experiments.

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BY MR. MADISON.

The Subject continued, and the incoherence of the Objections to the Plan exposed.

IT is not a little remarkable, that in every case reported by ancient history, in which government has been established with deliberation and consent, the task of framing it has not been committed to an assembly of men; but has been performed by some individual citizen, of pre-eminent wisdom and approved integrity.

Minos, we learn, was the primitive founder of the government of Crete; as Zaleucus was of that of the Locrians. Theseus first, and after him Draco and Solon, instituted the government of Athens. Lycurgus was the law-giver of Sparta. The foundation of the original government of Rome was laid by Romulus; and the work completed by two of his elective successors, Numa, and Tullus Hostilius. On the abolition of royalty, the consular administration was substituted by Brutus, who stepped forward with a project for such a reform, which he alleged had been prepared by Servius Tullius, and to which his address obtained the assent and ratification of the senate and people. This remark is applicable to confederate governments also. Amphyction, we are told, was the author of that which bore his name.

The Achæan league received its first birth from Achæus, and its second from Aratus.

What degree of agency these reputed law-givers might have in their respective establishments, or how far they might be clothed with the legitimate authority of the people, cannot, in every instance, be ascertained. In some, however, the proceeding was strictly regular. Draco appears to have been intrusted by the people of Athens, with indefinite powers to reform its government and laws. And Solon, according to Plutarch, was in a manner compelled, by the universal suffrage of his fellow-citizens, to take upon him the sole and absolute power of new-modelling the constitution. The proceedings under Lycurgus were less regular; but as far as the advocates for a methodical reform could prevail, they all turned their eyes towards the single efforts of that celebrated patriot and sage, instead of seeking to bring about a revolution, by the intervention of a deliberative body of citizens.

Whence could it have proceeded, that a people, jealous as the Greeks were of their liberty, should so far abandon the rules of caution, as to place their destiny in the hands of a single man? Whence could it have proceeded that the Athenians, a people who would not suffer an army to be commanded by fewer than ten generals, and who required no other proof of danger to their liberties than the illustrious merit of a fellow-citizen, should consider one distinguished person as a more eligible depository of the fortunes of themselves and their posterity, than a select body of citizens, from whose common deliberations more wisdom, as well as more safety, might have been expected? These questions cannot be fully answered, without supposing that the fear of

discord and disunion among a number of counsellors, exceeded the apprehension of treachery or incapacity in a single individual. History informs us likewise, of the difficulties with which these celebrated reformers had to contend; as well as of the expedients which they were obliged to employ, in order to carry their reforms into effect. Solon, who seems to have indulged a more temporizing policy, confessed that he had not given to his countrymen the government best suited to their happiness, but most tolerable to their prejudices. And Lycurgus, more true to his object, was under the necessity of mixing a portion of violence with the authority of superstition; and of securing his final success, by a voluntary renunciation, first of his country, and then of his life.

If these lessons teach us, on one hand, to admire the improvement made by America, on the ancient mode of preparing and establishing regular plans of government; they serve not less on the other, to admonish us of the hazards and difficulties incident to such experiments, and of the great imprudence of unnecessarily multiplying them.

Is it an unreasonable conjecture, that the errors which may be contained in the plan of the convention, are such as have resulted, rather from the defect of antecedent experience on this complicated and difficult subject, than from a want of accuracy or care in the investigation of it; and consequently, that they are such as will not be ascertained until an actual trial shall have pointed them out? This conjecture is rendered probable, not only by many considerations of a general nature, but by the particular case of the articles of confederation.

It is observable, that among the numerous objec-

tions and amendments suggested by the several states, when these articles were submitted for their ratification, not one is found, which alludes to the great and radical error, which on actual trial has discovered itself. And if we except the observations which New-Jersey was led to make, rather by her local situation, than by her peculiar foresight, it may be questioned whether a single suggestion was of sufficient moment to justify a revision of the system. There is abundant reason, nevertheless, to suppose that, immaterial as these objections were, they would have been adhered to with a very dangerous inflexibility in some states, had not a zeal for their opinions and supposed interests been stifled by the more powerful sentiment of self-preservation. One state, we may remember, persisted for several years in refusing her concurrence, although the enemy remained the whole period at our gates, or rather in the very bowels of our country. Nor was her pliancy in the end effected by a less motive, than the fear of being chargeable with protracting the public calamities, and endangering the event of the contest. Every candid reader will make the proper reflections on these important facts.

A patient, who finds his disorder daily growing worse; and that an efficacious remedy can no longer be delayed without extreme danger; after cooly revolving his situation, and the characters of different physicians, selects and calls in such of them as he judges most capable of administering relief, and best entitled to his confidence. The physicians attend: the case of the patient is carefully examined: a consultation is held: they are unanimously agreed that the symptoms are critical; but that the case, with proper and timely relief, is so far from being desp-

rate, that it may be made to issue in an improvement of his constitution. They are equally unanimous in prescribing the remedy by which this happy effect is to be produced. The prescription is no sooner made known, however, than a number of persons interpose, and without denying the reality or danger of the disorder, assure the patient that the prescription will be poison to his constitution, and forbid him, under pain of certain death, to make use of it. Might not the patient reasonably demand, before he ventured to follow this advice, that the authors of it should at least agree among themselves, on some other remedy to be substituted? And if he found them differing as much from one another, as from his first counsellors, would he not act prudently, in trying the experiment unanimously recommended by the latter, rather than in hearkening to those who could neither deny the necessity of a speedy remedy, nor agree in proposing one?

Such a patient, and in such a situation, is America at this moment. She has been sensible of her malady. She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is warned by others against following this advice, under pain of the most fatal consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed or in the proper one to be substituted? Let them speak for themselves.

This one tells us, that the proposed constitution ought to be rejected, because it is not a confederation of the states, but a government over individuals. Another admits, that it ought to be a govern-

ment over individuals, to a certain extent, but by no means to the extent proposed. A third does not object to the government over individuals, or to the extent proposed, but to the want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved to the states in their political capacity. A fifth is of opinion that a bill of rights of any sort would be superfluous and misplaced, and that the plan would be unexceptionable, but for the fatal power of regulating the times and places of election. An objector in a large state, exclaims loudly against the unreasonable equality of representation in the senate. An objector in a small state, is equally loud against the dangerous inequality in the house of representatives. From one quarter, we are alarmed with the amazing expense, from the number of persons who are to administer the new government. From another quarter, and sometimes from the same quarter, on another occasion the cry is that the congress will be but the shadow of a representation, and that the government would be far less objectionable, if the number and the expense were doubled. A patriot in a state that does not import or export, discerns insuperable objections against the power of direct taxation. The patriotic adversary in a state of great exports and imports, is not less dissatisfied that the whole burthen of taxes may be thrown on consumption. This politician discovers in the constitution a direct and irresistible tendency to monarchy. That, is equally sure, it will end in aristocracy. Another is puzzled to say which of these shapes it will ultimately assume, but sees clearly it must be one or other of them. Whilst a fourth is not wanting,

who with no less confidence affirms, that the constitution is so far from having a bias towards either of these dangers, that the weight on that side will not be sufficient to keep it upright and firm against its opposite propensities. With another class of adversaries to the constitution, the language is, that the legislative, executive, and judiciary departments, are intermixed in such a manner, as to contradict all the ideas of regular government, and all the requisite precautions in favour of liberty. Whilst this objection circulates in vague and general expressions, there are not a few who lend their sanction to it. Let each one come forward with his particular explanation, and scarcely any two are exactly agreed on the subject. In the eyes of one, the junction of the senate with the president, in the responsible function of appointing to offices, instead of vesting this power in the executive alone, is the vicious part of the organization. To another, the exclusion of the house of representatives, whose numbers alone could be a due security against corruption and partiality in the exercise of such a power, is equally obnoxious. With a third, the admission of the president into any share of a power, which must ever be a dangerous engine in the hands of the executive magistrate, is an unpardonable violation of the maxims of republican jealousy. No part of the arrangement, according to some, is more inadmissible than the trial of impeachments by the senate, which is alternately a member both of the legislative and executive departments, when this power so evidently belonged to the judiciary department. We concur fully, reply others, in the objection to this part of the plan, but we can never agree that a reference of impeachments to the judiciary authority would be an amendment of the error; our

principal dislike to the organization, arises from the extensive powers already lodged in that department. Even among the zealous patrons of a council of state, the most irreconcileable variance is discovered, concerning the mode in which it ought to be constituted. The demand of one gentleman is, that the council should consist of a small number, to be appointed by the most numerous branch of the legislature. Another would prefer a larger number, and considers it as a fundamental condition, that the appointment should be made by the president himself.

As it can give no umbrage to the writers against the plan of the federal constitution, let us suppose, that as they are the most zealous, so they are also the most sagacious, of those who think the late convention were unequal to the task assigned them, and that a wiser and better plan might and ought to be substituted. Let us further suppose, that their country should concur, both in this favourable opinion of their merits, and in their unfavourable opinion of the convention; and should accordingly proceed to form them into a second convention, with full powers, and for the express purpose, of revising and remoulding the work of the first. Were the experiment to be seriously made, though it requires some effort to view it seriously even in fiction, I leave it to be decided by the sample of opinions just exhibited, whether, with all their enmity to their predecessors, they would, in any one point, depart so widely from their example, as in the discord and ferment that would mark their own deliberations; and whether the constitution, now before the public, would not stand as fair a chance for immortality, as Lycurgus gave to that of Sparta, by

making its change to depend on his own return from exile and death, if it were to be immediately adopted, and were to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of law-givers.

It is a matter both of wonder and regret, that those who raise so many objections against the new constitution, should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would refuse to quit a shattered and tottering habitation, for a firm and commodious building, because the latter had not a porch to it; or because some of the rooms might be a little larger or smaller, or the ceiling a little higher or lower than his fancy would have planned them. But waiving illustrations of this sort, is it not manifest, that most of the capital objections urged against the new system, lie with tenfold weight against the existing confederation? Is an indefinite power to raise money dangerous in the hands of a federal government? The present congress can make requisitions to any amount they please; and the states are constitutionally bound to furnish them: they can emit bills of credit as long as they will pay for the paper; they can borrow both abroad and at home, as long as a shilling will be lent. Is an indefinite power to raise troops dangerous? The confederation gives to congress that power also; and they have already begun to make use of it. Is it improper and unsafe, to intermix the different powers of government in the same body of men? Congress, a single body of men, are

the sole depository of all the federal powers. Is it particularly dangerous, to give the keys of the treasury, and the command of the army, into the same hands? The confederation places them both in the hands of congress. Is a bill of rights essential to liberty? The confederation has no bill of rights. Is it an objection against the new constitution, that it empowers the senate, with the concurrence of the executive, to make treaties which are to be the laws of the land? The existing congress, without any such control, can make treaties which they themselves have declared, and most of the states have recognized, to be the supreme law of the land. Is the importation of slaves permitted by the new constitution for twenty years? By the old, it is permitted for ever.

I shall be told, that however dangerous this mixture of powers may be in theory, it is rendered harmless by the dependence of congress on the states for the means of carrying them into practice; that, however large the mass of powers may be, it is in fact a lifeless mass. Then, say I, in the first place, that the confederation is chargeable with the still greater folly, of declaring certain powers in the federal government to be absolutely necessary, and, at the same time, rendering them absolutely nugatory; and, in the next place, that if the union is to continue, and no better government be substituted, effective powers must either be granted to, or assumed by, the existing congress; in either of which events, the contrast just stated will hold good. But this is not all. Out of this lifeless mass, has already grown an excrescent power, which tends to realize all the dangers that can be apprehended from a defective construction of the supreme

government of the union. It is now no longer a point of speculation and hope, that the western territory is a mine of vast wealth to the United States; and although it is not of such a nature, as to extricate them from their present distresses, or for some time to come, to yield any regular supplies for the public expenses, yet must it hereafter be able, under proper management, both to effect a gradual discharge of the domestic debt, and to furnish, for a certain period, liberal tributes to the federal treasury. A very large proportion of this fund, has been already surrendered by individual states; and it may with reason be expected, that the remaining states will not persist in withholding similar proofs of their equity and generosity. We may calculate, therefore, that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock. Congress have assumed the administration of this stock. They have begun to render it productive. Congress have undertaken to do more—they have proceeded to form new states; to erect temporary governments; to appoint officers for them; and to prescribe the conditions on which such states shall be admitted into the confederacy. All this has been done; and done without the least colour of constitutional authority. Yet no blame has been whispered; no alarm has been sounded. A GREAT and INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men, who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to their support for an INDEFINITE PERIOD OF TIME. And yet there are men, who have not only been silent spectators of this prospect, but who are advocates for the system which exhibits it; and, at the same

time, urge against the new system the objections which we have heard. Would they not act with more consistency, in urging the establishment of the latter, as no less necessary to guard the union against the future powers and resources of a body constructed like the existing congress, than to save it from the dangers threatened by the present impotency of that assembly?

I mean not by any thing here said, to throw censure on the measures which have been pursued by congress. I am sensible that they could not have done otherwise. The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits. But is not the fact an alarming proof of the danger resulting from a government, which does not possess regular powers commensurate to its objects? A dissolution, or usurpation, is the dreadful dilemma to which it is continually exposed.

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NUMBER XXXIX.

BY MR. MADISON.

The Conformity of the Plan to Republican Principles: An Objection in respect to the powers of the Convention, examined.

THE last paper having concluded the observations, which were meant to introduce a candid survey of the plan of government reported by the convention,

we now proceed to the execution of that part of our undertaking.

The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination, which animates every votary of freedom, to rest all our political experiments, on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different states, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristrocacy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy

with which the term has been used in political disquisitions.

If we resort for a criterion, to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is *essential* to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honourable title of republic. It is *sufficient* for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been, or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every state in the union, some or other of the officers of the government, are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative

and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department, are to retain their offices by the firm tenure of good behaviour.

On comparing the constitution planned by the convention, with the standard here fixed, we perceive at once, that it is, in the most rigid sense, conformable to it. The house of representatives, like that of one branch at least of all the state legislatures, is elected immediately by the great body of the people. The senate, like the present congress, and the senate of Maryland, derives its appointment indirectly from the people. The president, is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges, with all other officers of the union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments, is equally conformable to the republican standard, and to the model of the state constitutions. The house of representatives is periodically elective, as in all the states; and for the period of two years, as in the state of South-Carolina. The senate is elective, for the period of six years; which is but one year more than the period of the senate of Maryland; and but two more than that of the senates of New-York and Virginia. The president is to continue in office, for the period of four years; as in New-York and Delaware, the chief magistrate is elected for three years, and South-Carolina for two years. In the other states the election is annual. In several of the states, however, no explicit pro-

vision is made for the impeachment of the chief magistrate. And in Delaware and Virginia, he is not impeachable till out of office. The president of the United States is impeachable, at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behaviour. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case, and the example of the state constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the state governments; and in its express guarantee of the republican form to each of the latter.

But it was not sufficient, say the adversaries of the proposed constitution, for the convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the union as a *confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the union as a *consolidation* of the states. And it is asked, by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires, that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government;

and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation; but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state—the authority of the people themselves. The act, therefore, establishing the constitution, will not be a *national*, but a *federal* act.

That it will be a federal, and not a national act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the union, nor from that of a *majority* of the states. It must result from the *unanimous* assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expres-

sed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States, would bind the minority; in the same manner as the majority of each state must bind the minority; and the will of the majority must be determined, either by a comparison of the individual votes, or by considering the will of the majority of the states, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will, if established, be a *federal* and not a *national* constitution.

The next relation is, to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of each particular state. So far the government is *national*, not *federal*. The senate, on the other hand, will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is *federal*, not *national*. The executive power, will be derived from a very compound source. The immediate election of the president, is to be made by the states in their political characters. The votes allotted to them, are in a compound ratio, which considers them

partly as distinct and co-equal societies; partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations, from so many distinct and co-equal bodies politic. From this aspect of the government, it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is, by the adversaries of the plan of the convention, supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities; in the latter on the individual citizens composing the nation, in their individual capacities. On trying the constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which states may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it in this relation, a *national* government.

But if the government be national, with regard to the *operation* of its powers, it changes its aspect again, when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over

all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities, form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several states, a residuary and inviolable sovereignty over all other objects. It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the constitution by its last relation to the authority by which amendments are to be made,

we find it neither wholly *national*, nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each state in the union, would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention, is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *states*, not by *citizens*, it departs from the *national*, and advances towards the *federal* character: In rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal*, and partakes of the *national* character.

The proposed constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal constitution; but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.

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BY MR. MADISON.

The same Objection further examined.

THE *second* point to be examined is, whether the convention were authorized to frame, and propose this mixed constitution.

The powers of the convention ought, in strictness, to be determined, by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis in September, 1786, or to that from congress in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends, the "appointment of commissioners to take into consideration the situation of the United States, to devise *such further provisions*, as shall appear to them necessary to render the constitution of the federal government, *adequate to the exigencies of the union;* and to report such an act for that purpose, to the United States in congress assembled, as, when agreed to by them, and afterwards confirmed by the legislature of every state, will effectually provide for the same."

The recommendatory act of congress is in the words following: "Whereas, there is provision in

" the articles of confederation and perpetual union,
" for making alterations therein, by the assent of
" a congress of the United States, and of the legis-
" latures of the several states: And whereas expe-
" rience hath evinced, that there are defects in the
" present confederation; as a mean to remedy which,
" several of the states, and *particularly the state of*
" *New-York*, by express instructions to their dele-
" gates in congress, have suggested a convention for
" the purposes expressed in the following resolu-
" tion; and such convention appearing to be the
" most probable mean of establishing in these states,
" *a firm national government*,"

" Resolved, That in the opinion of congress, it is
" expedient, that on the 2d Monday in May next, a
" convention of delegates, who shall have been ap-
" pointed by the several states, be held at Phila-
" delphia, for the sole and express purpose *of revi-*
" *sing the articles of confederation*, and reporting to
" congress and the several legislatures, such *altera-*
" *tions and provisions therein*, as shall, when agreed
" to in congress, and confirmed by the states, ren-
" der the federal constitution *adequate to the exi-*
" *gencies of government, and the preservation of the*
" *union*."

From these two acts, it appears, 1st, that the object of the convention, was to establish, in these states, *a firm national government;* 2d, that this government was to be such as would be *adequate to the exigencies of government*, and *the preservation of the union;* 3d, that these purposes were to be effected by *alterations and provisions in the articles of confederation*, as it is expressed in the act of congress—or by *such further provisions as should appear necessary*, as it stands in the recommendary act from Annapo-

lis; 4th, that the alterations and provisions were to be reported to congress, and to the states, in order to be agreed to by the former, and confirmed by the latter.

From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a *national government*, adequate to the *exigencies of government* and *of the union;* and to reduce the articles of confederation into such form, as to accomplish these purposes.

There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means.

Suppose, then, that the expressions defining the authority of the convention, were irreconcileably at variance with each other; that a *natural* and *adequate government* could not possibly, in the judgment of the convention, be affected by *alterations* and *provisions* in the *articles of confederation;* which part of the definition ought to have been embraced, and which rejected? Which was the more important, and which the less important part? Which the end, which the means? Let the most scrupulous expositors of delegated powers; let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of confe-

deration should be disregarded, and an adequate government be provided, and the union preserved; or that an adequate government should be omitted, and the articles of confederation preserved. Let them declare, whether the preservation of these articles was the end, for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed.

But is it necessary to suppose, that these expressions are absolutely irreconcileable to each other; that no *alterations* or *provisions* in the *articles of the confederation*, could possibly mould them into a national and adequate government; into such a government as has been proposed by the convention?

No stress, it is presumed, will in this case, be laid on the *title;* a change of that could never be deemed an exercise of ungranted power. *Alterations* in the body of the instrument, are expressly authorized. *New provisions* therein, are also expressly authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted, that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative, ought at least to mark the boundary between authorized and usurped innovations; between that degree of change which lies within the compass of *alterations and further provisions*, and that which amounts to a *transmutation* of the government. Will it be said, that the alterations ought not to have touched the substance of the confederation? The states would never have appointed a conven-

tion with so much solemnity, nor described its objects with so much latitude, if some *substantial* reform had not been in contemplation. Will it be said, that the *fundamental principles* of the confederation were not within the purview of the convention, and ought not to have been varied? I ask, what are these principles? Do they require, that in the establishment of the constitution, the states should be regarded as distinct and independent sovereigns? They are so regarded by the constitution proposed. Do they require, that the members of the government should derive their appointment from the legislatures, not from the people of the states? One branch of the new government is to be appointed by these legislatures; and under the confederation, the delegates to congress *may all* be appointed immediately by the people—and in two states* are actually so appointed. Do they require, that the powers of the government should act on the states, and not immediately on individuals? In some instances, as has been shown, the powers of the new government will act on the states in their collective characters. In some instances also, those of the existing government act immediately on individuals. In cases of capture; of piracy; of the post-office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different states; and above all, in the case of trials by courts-martial in the army and navy; by which death may be inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases, the powers of the confederation operate immediately on the persons and interests of individual citizens. Do these fundamental

* Connecticut and Rhode-Island.

principles require, particularly, that no tax should be levied, without the intermediate agency of the states? The confederation itself authorizes a direct tax, to a certain extent, on the post-office. The power of coinage, has been so construed by congress, as to levy a tribute immediately from that source also. But, pretermitting these instances, was it not an acknowledged object of the convention, and the universal expectation of the people, that the regulation of trade should be submitted to the general government, in such a form as would render it an immediate source of general revenue? Had not congress repeatedly recommended this measure, as not inconsistent with the fundamental principles of the confederation? Had not every state, but one; had not New-York herself, so far complied with the plan of congress, as to recognize the *principle* of innovation? Do these principles, in fine, require that the powers of the general government should be limited, and that, beyond this limit, the states should be left in possession of their sovereignty and independence? We have seen that in the new government, as in the old, the general powers are limited; and that the states, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction.

The truth is, that the great principles of the constitution proposed by the convention, may be considered less, as absolutely new, than as the expansion of the principles which are found in the articles of confederation. The misfortune under the latter system has been, that these principles are so feeble and confined, as to justify all the charges of inefficiency which have been urged against it; and to require a degree of enlargement, which gives to the

new system the aspect of an entire transformation of the old.

In one particular, it is admitted, that the convention have departed from the tenour of their commission. Instead of reporting a plan requiring the confirmation *of all the states*, they have reported a plan, which is to be confirmed, and may be carried into effect, by *nine states only*. It is worthy of remark, that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve states to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a *majority* of one sixtieth of the people of America, to a measure approved and called for by the voice of twelve states, comprising fifty-nine sixtieths of the people; an example still fresh in the memory and indignation of every citizen who has felt for the wounded honour and prosperity of his country. As this objection, therefore, has been in a manner waived by those who have criticised the powers of the convention, I dismiss it without further observation.

The *third* point to be inquired into is, how far considerations of duty arising out of the case itself, could have supplied any defect of regular authority.

In the preceding inquiries, the powers of the convention have been analyzed and tried with the same rigour, and by the same rules, as if they had been real and final powers, for the establishment of a constitution for the United States. We have seen, in what manner they have borne the trial, even on

that supposition. It is time now to recollect, that the powers were merely advisory and recommendatory; that they were so meant by the states, and so understood by the convention; and that the latter have accordingly planned and proposed a constitution, which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention.

Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country, almost with one voice, to make so singular and solemn an experiment, for correcting the errors of a system, by which this crisis had been produced; that they were no less deeply and unanimously convinced, that such a reform as they have proposed, was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them, that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety, to the event of their deliberations. They had every reason to believe, that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the *proposition*, made by a single state, (Virginia,) towards a partial amendment of the confederation, had been attended to and promoted. They had seen the *liberty assum-*

ed by a *very few* deputies, from a *very few states*, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect, by twelve out of the thirteen states. They had seen, in a variety of instances, assumptions by congress, not only of recommendatory, but of operative powers, warranted in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory, the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness*;" since it is impossible for the people spontaneously and universally, to move in concert towards their object: and it is therefore essential, that such changes be instituted by some *informal and unauthorized propositions*, made by some patriotic and respectable citizen, or number of citizens. They must have recollected, that it was by this irregular and assumed privilege, of proposing to the people plans for their safety and happiness, that the states were first united against the danger with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts, and defending their rights; and that *conventions* were *elected* in *the several states*, for establishing the constitutions under which they are now go-

* Declaration of Independence.

verned; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were any where seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed, was to be submitted to *the people themselves*, the disapprobation of this supreme authority would destroy it for ever; its approbation blot out all antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies.

Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay, and the hazard of events; let me ask the man, who can raise his mind to one elevated conception; who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assemby?—Or if there be a man whose propensity to condemn is

susceptible of no control, let me then ask what sentence he has in reserve for the twelve states who *usurped the power* of sending deputies to the convention, a body utterly unknown to their constitutions; for congress, who recommended the appointment of this body, equally unknown to the confederation; and for the state of New-York, in particular, who first urged, and then complied with this unauthorized interposition?

But that the objectors may be disarmed of every pretext, it shall be granted for a moment, that the convention were neither authorized by their commission, nor justified by circumstances, in proposing a constitution for their country: Does it follow that the constitution ought, for that reason alone, to be rejected? If according to the noble precept, it be lawful to accept good advice even from an enemy, shall we set the ignoble example, of refusing such advice even when it is offered by our friends? The prudent inquiry in all cases, ought surely to be not so much *from whom* the advice comes, as whether the advice be *good*.

The sum of what has been here advanced and proved, is, that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assumed; and that finally, if they had violated both their powers and their obligations, in proposing a constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people

of America. How far this character is due to the constitution, is the subject under investigation.

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NUMBER XLI.

BY MR. MADISON.

General View of the Powers proposed to be vested in the Union.

THE constitution proposed by the convention, may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the states. The SECOND, to the particular structure of the government, and the distribution of this power, among its several branches.

Under the first view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government, be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several states?

Is the aggregate power of the general government greater than ought to have been vested in it? This is the first question.

It cannot have escaped those, who have attended with candour to the arguments employed against the extensive powers of the government, that the authors of them have very little considered how far these powers were necessary means of attaining a

necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power or trust, of which a beneficial use can be made. This method of handling the subject, cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking, and may confirm the prejudices of the misthinking. But cool and candid people will at once reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT good; and that in every political institution, a power to advance the public happiness, involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases, where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the union; and that this may be the more conveniently done, they may be reduced into different classes, as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the states; 4. Certain miscellaneous objects of general utility;

5. Restraint of the states from certain injurious acts;
6. Provisions for giving due efficacy to all these powers.

The powers falling within the first class, are those of declaring war, and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger, is one of the primitive objects of civil society. It is an avowed and essential object of the American union. The powers requisite for attaining it, must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing confederation establishes this power in the most ample form.

Is the power of raising armies, and equipping fleets, necessary? This is involved in the foregoing power. It is involved in the power of self-defence.

But was it necessary to give an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE, as well as in WAR?

The answer to these questions has been too far anticipated, in another place, to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive, as scarcely to justify such a discussion in any place. With what colour of propriety, could the force necessary for defence be limited, by those who cannot limit the force of offence? If a federal constitution could chain the ambition, or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own govern-

ment, and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner, the preparations and establishments of every hostile nation? The means of security can only be regulated, by the means and the danger of attack. They will in fact be ever determined by these rules, and by no other. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations, who may be within the reach of its enterprises, to take corresponding precautions. The fifteenth century was the unhappy epoch of military establishments in time of peace. They were introduced by Charles VII. of France. All Europe has followed, or been forced into the example. Had the example not been followed by other nations, all Europe must long ago have worn the chains of an universal monarch.—Were every nation, except France, now to disband its peace establishment, the same event might follow. The veteran legions of Rome, were an overmatch for the undisciplined valour of all other nations, and rendered her mistress of the world.

Not less true is it, that the liberties of Rome proved the final victim to her military triumphs, and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force,

therefore, is a dangerous, at the same time that it may be a necessary, provision. On the smallest scale, it has its inconveniences. On an extensive scale, its consequences may be fatal. On any scale, it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one, which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed constitution. The union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition, than America disunited, with an hundred thousand veterans ready for combat. It was remarked, on a former occasion, that the want of this pretext, had saved the liberties of one nation in Europe. Being rendered, by her insular situation, and her maritime resources, impregnable to the armies of her neighbours, the rulers of Great-Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance of the United States from the powerful nations of the world, gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten, that they are indebted for this advantage to their union alone. The moment of its dissolution, will be the date of a new order of things. The

fears of the weaker, or the ambition of the stronger states, or confederacies, will set the same example in the new, as Charles VII. did in the old world. The example will be followed here, from the same motives which produced universal imitation there. Instead of deriving from our situation, the precious advantage which Great-Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty every where crushed between standing armies, and perpetual taxes. The fortunes of disunited America, will be even more disasterous than those of Europe. The sources of evil in the latter, are confined to her own limits. No superior powers of another quarter of the globe, intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambition, jealousy, and revenge. In America, the miseries springing from her internal jealousies, contentions, and wars, would form a part only of her lot. A plentiful addition of evils, would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe.

This picture of the consequences of disunion cannot be too highly coloured, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty, ought to have it ever before his eyes, that he may cherish in his heart a due attachment to the union of America, and be able to set a due value on the means of preserving it.

Next to the effectual establishment of the union, the best possible precaution against danger from standing armies, is a limitation of the term for

which revenue may be appropriated to their support. This precaution the constitution has prudently added. I will not repeat here the observations, which I flatter myself have placed this subject in a just and satisfactory light. But it may not be improper to take notice of an argument against this part of the constitution, which has been drawn from the policy and practice of Great-Britain. It is said, that the continuance of an army in that kingdom, requires an annual vote of the legislature; whereas the American constitution has lengthened this critical period to two years. This is the form in which the comparison is usually stated to the public: But is it a just form? Is it a fair comparison? Does the British constitution restrain the parliamentary discretion to one year? Does the American impose on the congress appropriations for two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves, that the British constitution fixes no limit whatever to the discretion of the legislature, and that the American ties down the legislature to two years, as the longest admissible term.

Had the argument from the British example been truly stated, it would have stood thus: The term for which supplies may be appropriated to the army establishment, though unlimited by the British constitution, has, nevertheless, in practice, been limited by parliamentary discretion, to a single year. Now if in Great-Britain, where the house of commons is elected for seven years; where so great a proportion of the members are elected by so small a proportion of the people; where the electors are so corrupted by the representatives, and the representatives so corrupted by the crown, the representative body can

possess a power to make appropriations to the army for an indefinite term, without desiring, or without daring, to extend the term beyond a single year; ought not suspicion herself to blush, in pretending that the representatives of the United States, elected FREELY, by the WHOLE BODY of the people, every SECOND YEAR, cannot be safely intrusted with a discretion over such appropriations, expressly limited to the short period of TWO YEARS?

A bad cause seldom fails to betray itself. Of this truth, the management of the opposition to the federal government, is an unvaried exemplification. But among all the blunders which have been committed, none is more striking than the attempt to enlist on that side, the prudent jealousy entertained by the people, of standing armies. The attempt has awakened fully the public attention to that important subject; and has led to investigations which must terminate in a thorough and universal conviction, not only that the constitution has provided the most effectual guards against danger from that quarter, but that nothing short of a constitution fully adequate to the national defence, and the preservation of the union, can save America from as many standing armies, as it may be split into states or confederacies; and from such a progressive augmentation of these establishments in each, as will render them as burdensome to the properties, and ominous to the liberties of the people, as any establishment that can become necessary, under a united and efficient government, must be tolerable to the former, and safe to the latter.

The palpable necessity of the power, to provide and maintain a navy, has protected that part of the constitution against a spirit of censure, which has

spared few other parts. It must indeed be numbered among the greatest blessings of America, that as her union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect, our situation bears another likeness to the insular advantage of Great-Britain. The batteries most capable of repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious government against our liberties.

The inhabitants of the Atlantic frontier, are all of them deeply interested in this provision for naval protection, and if they have hitherto been suffered to sleep quietly in their beds: if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terrors of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of the union ought to feel more anxiety on this subject than New-York. Her sea-coast is extensive. The very important district of the state, is an island. The state itself, is penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may almost be regarded as a hostage, for ignominious compliances with the dictates of a foreign enemy; or even with the rapacious demands of pi-

rates and barbarians. Should a war be the result of the precarious situation of European affairs, and all the unruly passions attending it be let loose on the ocean, our escape from insults and depredations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of America, the states more immediately exposed to these calamities, have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them.

The power of regulating and calling forth the militia, has been already sufficiently vindicated and explained.

The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defence, is properly thrown into the same class with it. This power also has been examined already with much attention, and has, I trust, been clearly shown to be necessary, both in the extent and form given to it by the constitution. I will address one additional reflection only, to those who contend that the power ought to have been restrained to external taxation—by which they mean, taxes on articles imported from other countries. It cannot be doubted, that this will always be a valuable source of revenue; that, for a considerable time, it must be a principal source; that, at this moment, it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of im-

ports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants. As long as agriculture continues the sole field of labour, the importation of manufactures must increase as the consumers multiply. As soon as domestic manufactures are begun by the hands not called for by agriculture, the imported manufactures will decrease as the number of the people increase. In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties, than to be loaded with discouraging duties. A system of government, meant for duration, ought to contemplate these revolutions, and be able to accommodate itself to them.

Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the constitution, on the language in which it is defined. It has been urged and echoed that the power "to lay and collect taxes, duties, "imposts, and excises, to pay debts, and provide "for the common defence and general welfare of "the United States," amounts to an unlimited commission to exercise every power, which may be alleged to be necessary for the common defence or general welfare. No stronger proof could be given of the distress under which these writers labour for objections, than their stooping to such a misconstruction.

Had no other enumeration or definition of the powers of the congress been found in the constitution, than the general expressions just cited, the authors of the objection might have had some co-

lour for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the "general welfare."

But what colour can the objection have, when a specification of the objects alluded to by these general terms, immediately follows; and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it; shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural or common, than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars, which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity which, as we are reduced to the dilemma of charging either on the authors of the objection, or on the authors of the constitution, we must take the liberty of supposing, had not its origin with the latter.

The objection here is the more extraordinary, as it appears, that the language used by the conven-

tion, is a copy from the articles of confederation. The objects of the union among the states, as described in article 3d, are, "their common defence, "security of their liberties, and mutual and general welfare." The terms of article 8th, are still more identical. "All charges of war, and all other "expenses, that shall be incurred for the common "defence or general welfare, and allowed by the "United States in congress, shall be defrayed out "of a common treasury, &c." A similar language again occurs in article 9. Construe either of these articles, by the rules which would justify the construction put on the new constitution, and they vest in the existing congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications, which ascertain and limit their import, they had exercised an unlimited power of providing for the common defence and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of congress, as they now make use of against the convention? How difficult it is for error to escape its own condemnation!

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The same View continued.

THE *second* class of powers lodged in the general government, consists of those which regulate the intercourse with foreign nations, to wit, to make treaties; to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations; to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations.

This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations.

The powers to make treaties, and to send and receive ambassadors, speak their own propriety. Both of them are comprised in the articles of confederation; with this difference only, that the former is disembarrassed by the plan of the convention of an exception, under which treaties might be substantially frustrated by regulations of the states; and that a power of appointing and receiving "other "public ministers and consuls," is expressly and very properly added to the former provision concern-

ing ambassadors. The term ambassador, if taken strictly, as seems to be required by the second of the articles of confederation, comprehends the highest grade only of public ministers; and excludes the grades which the United States will be most likely to prefer, where foreign embassies may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has been found expedient, and has been the practice of congress, to employ the inferior grades of public ministers; and to send and receive consuls.

It is true, that where treaties of commerce stipulate for the mutual appointment of consuls, whose functions are connected with commerce, the admission of foreign consuls may fall within the power of making commercial treaties; and that, where no such treaties exist, the mission of American consuls into foreign countries, may *perhaps* be covered under the authority given by the 9th article of the confederation, to appoint all such civil officers as may be necessary for managing the general affairs of the United States. But the admission of consuls into the United States, where no previous treaty has stipulated it, seems to have been no where provided for. A supply of the omission, is one of the lesser instances in which the convention have improved on the model before them. But the most minute provisions become important, when they tend to obviate the necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which congress have been betrayed, or forced, by the defects of the confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject; and would be no inconsiderable argu-

ment in favour of the new constitution, which seems to have provided no less studiously for the lesser, than the more obvious and striking defects of the old.

The power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations, belongs with equal propriety to the general government; and is a still greater improvement on the articles of confederation.

These articles contain no provision for the case of offences against the law of nations; and consequently leave it in the power of any indiscreet member to embroil the confederacy with foreign nations.

The provision of the federal articles on the subject of piracies and felonies, extends no further than to the establishment of courts for the trial of these offences. The definition of piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative definition of them is found in most municipal codes. A definition of felonies on the high seas, is evidently requisite. Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common, nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its own by legislative adoption. The meaning of the term, as defined in the codes of the several states, would be as impracticable, as the former would be a dishonourable and illegitimate guide. It is not precisely the same in any two of the states; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the

power of defining felonies in this case, was in every respect necessary and proper.

The regulation of foreign commerce, having fallen within several views which have been taken of this subject, has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration.

It were doubtless to be wished, that the power of prohibiting the importation of slaves, had not been postponed until the year 1808, or rather, that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole cause is expressed. It ought to be considered as a great point gained in favour of humanity, that a period of twenty years may terminate for ever within these states, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few states which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them, of being redeemed from the oppression of their European brethren!

Attempts have been made to pervert this clause into an objection against the constitution, by representing it on one side, as a criminal toleration of an illicit practice; and on another, as calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to give them an answer, for they

deserve none; but as specimens of the manner and spirit, in which some have thought fit to conduct their opposition to the proposed government.

The powers included in the *third* class, are those which provide for the harmony and proper intercourse among the states.

Under this head, might be included the particular restraints imposed on the authority of the states, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined, when we arrive at the structure and organization of the government.

I shall confine myself to a cursory review of the remaining powers comprehended under this third description, to wit, to regulate commerce among the several states and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish an uniform rule of naturalization, and uniform laws of bankruptcy; to prescribe the manner in which the public acts, records, and judicial proceedings of each state shall be proved, and the effect they shall have in other states, and to establish post-offices and post-roads.

The defect of power in the existing confederacy, to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks, which former papers have brought into view on this subject, it may be added, that without this supplemental provision, the great and essential power of regulating foreign commerce,

would have been incomplete, and ineffectual. A very material object of this power was the relief of the states which import and export through other states, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between state and state, it must be foreseen, that ways would be found out, to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter, and the consumers of the former. We may be assured, by past experience, that such a practice would be introduced by future contrivances and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial states to collect in any form, an indirect revenue from their uncommercial neighbours, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamours of an impatient avidity for immediate and immoderate gain.

The necessity of a superintending authority over the reciprocal trade of confederated states, has been illustrated by other examples as well as our own. In Switzerland, where the union is so very slight, each canton is obliged to allow to merchandizes, a passage through its jurisdiction into other cantons,

without an augmentation of the tolls. In Germany, it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the union of the Netherlands, on its members, one is, that they shall not establish imposts disadvantageous to their neighbours, without the general permission.

The regulation of commerce with the Indian tribes, is very properly unfettered from two limitations in the articles of confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the states, and is not to violate or infringe the legislative right of any state within its own limits. What description of Indians are to be deemed members of a state, is not yet settled; and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a state, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case, in which the articles of confederation have inconsiderately endeavoured to accomplish impossibilities; to reconcile a partial severeignty in the union, with complete sovereignty in the states; to subvert a mathematical axiom, by taking away a part, and letting the whole remain.

All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for this last case, the constitution has supplied a material omission in the articles of confederation. The authority of the existing congress is restrained to the regulation of coin *struck* by their own authority, or that of the respective states. It must be seen at once, that the proposed uniformity in the *value* of the current coin, might be destroyed by subjecting that of the foreign coin to the different regulations of the different states.

The punishment of counterfeiting the public securities, as well as of the current coin, is submitted of course to that authority, which is to secure the value of both.

The regulation of weights and measures is transferred from the articles of confederation, and is founded on like considerations with the preceding power of regulating coin.

The dissimilarity in the rules of naturalization, has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the 4th article of the confederation, it is declared, " that the *free inhabitants* of " each of these states, paupers, vagabonds, and fu- " gitives from justice excepted, shall be entitled to " all privileges and immunities of *free citizens* in " the several states, and *the people* of each state, " shall in every other, enjoy all the privileges of " trade and commerce," &c. There is a confusion of language here, which is remarkable. Why the terms *free inhabitants*, are used in one part of the article; *free citizens* in another, and *people* in another; or what was meant by superadding " to all

"privileges and immunities of free citizens,"—"all "the privileges of trade and commerce," cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of *free inhabitants* of a state, although not citizens of such state, are entitled, in every other state, to all the privileges of *free citizens* of the latter; that is, to greater privileges than they may be entitled to in their own state; so that it may be in the power of a particular state, or rather every state, is laid under a necessity, not only to confer the rights of citizenship in other states, upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term "inhabitants" to be admitted, which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each state, of naturalizing aliens in every other state. In one state, residence for a short term, confers all the rights of citizenship: in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one state, be preposterously rendered paramount to the law of another, within the jurisdiction of the other.

We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several states, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent, not only with the rights of citizenship, but with

the privileges of residence. What would have been the consequence, if such persons, by residence, or otherwise, had acquired the character of citizens under the laws of another state, and then asserted their rights as such, both to residence and citizenship within the state proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature, not to be provided against. The new constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the confederation on this head, by authorizing the general government to establish an uniform rule of naturalization throughout the United States.

The power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties live, or their property may lie, or be removed into different states, that the expediency of it seems not likely to be drawn into question.

The power of prescribing, by general laws, the manner in which the public acts, records, and judicial proceedings of each state, shall be proved, and the effect they shall have in other states, is an evident and valuable improvement on the clause relating to this subject in the articles of confederation. The meaning of the latter is extremely indeterminate; and can be of little importance under any interpretation which it will bear. The power here established, may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous states, where the effects liable to justice, may be suddenly and secretly

translated in any stage of the process, within a foreign jurisdiction.

The power of establishing post-roads, must, in every view, be a harmless power; and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the states, can be deemed unworthy of the public care.

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The same View continued.

THE *fourth* class comprises the following miscellaneous powers:

1. A power to "promote the progress of science "and useful arts, by securing for a limited time, "to authors and inventors, the exclusive right to their "respective writings and discoveries."

The utility of this power, will scarcely be questioned. The copy-right of authors has been solemnly adjudged in Great Britain, to be a right at common law. The right to useful inventions, seems with equal reason to belong to the inventors. The public good fully coincides in both cases, with the claims of individuals. The states cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of

this point, by laws passed at the instance of Congress.

2. "To exercise exclusive legislation in all cases "whatsoever, over such district, (not exceeding "ten miles square,) as may by cession of particular "states, and the acceptance of congress, become "the seat of the government of the United States; "and to exercise like authority over all places pur-"chased by the consent of the legislature of the "states, in which the same shall be, for the erection "of forts, magazines, arsenals, dock-yards, and other "needful buildings."

The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted, and its proceedings be interrupted with impunity, but a dependence of the members of the general government on the state comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonourable to the government, and dissatisfactory to the other members of the confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government, would be both too great a public pledge to be left in the hands of a single state, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district, is sufficiently circumscribed, to satisfy every jealousy of an opposite nature. And as it is to be

appropriated to this use, with the consent of the state ceding it; as the state will no doubt provide in the compact for the rights, and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest, to become willing parties to the cession; as they will have had their voice in the election of the government, which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the state, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the state, in their adoption of the constitution, every imaginable objection seems to be obviated.

The necessity of a like authority over forts, magazines, &c. established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, require, that they should be exempt from the authority of the particular state. Nor would it be proper, for the places on which the security of the entire union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the states concerned, in every such establishment.

3. "To declare the punishment of treason, but "no attainder of treason shall work corruption of "blood, or forfeiture, except during the life of the "person attainted."

As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it; but as new fangled and

artificial treasons, have been the great engines by which violent factions, the natural offspring of free governments, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.

4. "To admit new states into the union; but no "new state shall be formed or erected within the "jurisdiction of any other state; nor any state be "formed by the junction of two or more states, or "parts of states, without the consent of the legis-"latures of the states concerned, as well as of the "congress."

In the articles of confederation, no provision is found on this important subject. Canada was to be admitted of right, on her joining in the measures of the United States; and the other *colonies*, by which were evidently meant the other British colonies, at the discretion of nine states. The eventual establishment of *new states*, seems to have been overlooked by the compilers of that instrument. We have seen the inconvenience of this omission, and the assumption of power into which congress have been led by it. With great propriety, therefore, has the new system supplied the defect. The general precaution, that no new states shall be formed, without the concurrence of the federal authority, and that of the states concerned, is consonant to the principles which ought to govern such transactions. The particular precaution against the erection of new states, by the partition of a state without its consent, quiets the

jealousy of the larger states; as that of the smaller is quieted by a like precaution, against a junction of states without their consent.

5. "To dispose of, and make all needful rules "and regulations, respecting the territory or other "property belonging to the United States, with a "proviso, that nothing in the constitution shall be "so construed, as to prejudice any claims of the "United States, or of any particular state."

This is a power of very great importance, and required by considerations, similar to those which show the propriety of the former. The proviso annexed, is proper in itself, and was probably rendered absolutely necessary, by jealousies and questions concerning the western territory, sufficiently known to the public.

6. "To guarantee to every state in the union a "republican form of government; to protect each "of them against invasion; and on application of "the legislature, or of the executive, (when the "legislature cannot be convened,) against domestic "violence."

In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such an union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist, that the forms of government under which the compact was entered into, should be *substantially* maintained.

But a right implies a remedy; and where else could the remedy be deposited, than where it is

deposited by the constitution? Governments of dissimilar principles and forms, have been found less adapted to a federal coalition of any sort, than those of a kindred nature. "As the confederate republic "of Germany," says Montesquieu, "consists of "free cities and petty states, subject to different "princes, experience shows us, that it is more im-"perfect than that of Holland and Switzerland." "Greece was undone," he adds, "as soon as the "king of Macedon obtained a seat among the Am-"phyctions." In the latter case, no doubt, the disproportionate force, as well as the monarchical form of the new confederate, had its share of influence on the events.

It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the state governments, without the concurrence of the states themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event will be a harmless superfluity only in the constitution. But who can say what experiments may be produced by the caprice of particular states, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? To the second question, it may be answered, that if the general government should interpose by virtue of this constitutional authority, it will be of course bound to pursue the authority. But the authority extends no further than to a *guaranty* of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long therefore as the existing republican forms are continued by the states, they are guaranteed by the federal

constitution. Whenever the states may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican, for anti-republican constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

A protection against invasion, is due from every society, to the parts composing it. The latitude of the expression here used, seems to secure each state not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful neighbours. The history both of ancient and modern confederacies, proves that the weaker members of the union ought not to be insensible to the policy of this article.

Protection against domestic violence, is added with equal propriety. It has been remarked, that even among the Swiss cantons, which, properly speaking, are not under one government, provision is made for this object; and the history of that league informs us, that mutual aid is frequently claimed and afforded; and as well by the most democratic, as the other cantons. A recent and well-known event among ourselves, has warned us to be prepared for emergencies of a like nature.

At first view, it might seem not to square with the republican theory, to suppose, either that a majority have not the right, or that a minority will have the force to subvert a government; and consequently, that the federal interposition can never be required but when it would be improper. But theoretic reasoning in this, as in most other cases, must be qualified by the lessons of practice. Why

may not illicit combinations for purposes of violence, be formed as well by a majority of a state, especially a small state, as by a majority of a county, or a district of the same state; and if the authority of the state ought in the latter case to protect the local magistracy, ought not the federal authority in the former to support the state authority? Besides, there are certain parts of the state constitutions, which are so interwoven with the federal constitution, that a violent blow cannot be given to the one without communicating the wound to the other. Insurrections in a state will rarely induce a federal interposition, unless the number concerned in them, bear some proportion to the friends of government. It will be much better, that the violence in such cases should be repressed by the superintending power, than that the majority should be left to maintain their cause, by a bloody and obstinate contest. The existence of a right to interpose, will generally prevent the necessity of exerting it.

Is it true, that force and right are necessarily on the same side in republican governments? May not the minor party possess such a superiority of pecuniary resources, of military talents and experience, or of secret succours from foreign powers, as will render it superior also in an appeal to the sword? May not a more compact and advantageous position, turn the scale on the same side, against a superior number so situated, as to be less capable of a prompt and collected exertion of its strength? Nothing can be more chimerical than to imagine, that in a trial of actual force, victory may be calculated by the rules which prevail in a census of the inhabitants, or which determine the event of an election! May it not happen, in fine, that the

minority of *citizens* may become a majority of *persons*, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the state has not admitted to the rights of suffrage? I take no notice of an unhappy species of population abounding in some of the states, who, during the calm of regular government, are sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into the human character, and give a superiority of strength to any party with which they may associate themselves.

In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms and tearing a state to pieces, than the representatives of confederate states, not heated by the local flame? To the impartiality of judges, they would unite the affection of friends. Happy would it be, if such a remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual, could be established for the universal peace of mankind.

Should it be asked, what is to be the redress for an insurrection pervading all the states, and comprising a superiority of the entire force, though not a constitutional right? The answer must be, that such a case, as it would be without the compass of human remedies, so it is fortunately not within the compass of human probability; and that it is a sufficient recommendation of the federal constitution, that it diminishes the risk of a calamity for which no possible constitution can provide a cure.

Among the advantages of a confederate *republic*, enumerated by Montesquieu, an important one is,

"that should a popular insurrection happen in one
"of the states, the others are able to quell it.—
"Should abuses creep into one part, they are re-
"formed by those that remain sound."

7. "To consider all debts contracted, and en-
"gagements entered into, before the adoption of
"this constitution, as being no less valid against
"the United States under this constitution, than
"under the confederation."

This can only be considered as a declaratory proposition; and may have been inserted, among other reasons, for the satisfaction of the foreign creditors of the United States, who cannot be strangers to the pretended doctrine, that a change in the political form of civil society, has the magical effect of dissolving its moral obligations.

Among the lesser criticisms which have been exercised on the constitution, it has been remarked, that the validity of engagements ought to have been inserted in favour of the United States, as well as against them; and in the spirit which usually characterizes little critics, the omission has been transformed and magnified into a plot against the national rights. The authors of this discovery may be told, what few others need be informed of, that, as engagements are in their nature reciprocal, an assertion of their validity on one side, necessarily involves a validity on the other side; and that, as the article is merely declaratory, the establishment of the principle in one case, is sufficient for every case. They may be further told, that every constitution must limit its precautions, to dangers that are not altogether imaginary; and, that no real danger can exist that the government would *dare*, with, or even without, this constitutional declaration be-

fore it, to remit the debts justly due to the public, on the pretext here condemned.

8. "To provide for amendments to be ratified by "three fourths of the states, under two exceptions "only."

That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention, seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It moreover equally, enables the general, and the state governments, to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other. The exception in favour of the equality of suffrage in the senate, was probably meant as a palladium to the residuary sovereignty of the states; implied and secured by that principle of representation in one branch of the legislature; and was probably insisted on by the states particularly attached to that equality. The other exception must have been admitted on the same considerations, which produced the privilege defended by it.

9. "The ratification of the conventions of nine "states, shall be sufficient for the establishment "of this constitution, between the states ratifying "the same."

This article speaks for itself. The express authority of the people alone, could give due validity to the constitution. To have required the unanimous ratification of the thirteen states, would have subjected the essential interests of the whole, to

the caprice or corruption of a single member. It would have marked a want of foresight in the convention, which our own experience would have rendered inexcusable.

Two questions of a very delicate nature present themselves on this occasion. 1. On what principle the confederation, which stands in the solemn form of a compact among the states, can be superseded without the unanimous consent of the parties to it? 2. What relation is to subsist between the nine or more states ratifying the constitution, and the remaining few who do not become parties to it?

The first question is answered at once, by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature, and of nature's God, which declares that the safety and happiness of society, are the objects at which all political institutions aim, and to which all such institutions must be sacrificed. *Perhaps* also an answer may be found, without searching beyond the principles of the compact itself. It has been heretofore noted among the defects of the confederation, that in many of the states, it had received no higher sanction than a mere legislative ratification. The principle of reciprocality seems to require, that its obligation on the other states, should be reduced to the same standard. A compact between independent sovereigns, founded on acts of legislative authority, can pretend to no higher validity, than a league or treaty between the parties. It is an established doctrine on the subject of treaties, that all the articles are mutually conditions of each other; that a breach of any one article, is a breach of the whole treaty; and that a breach committed by either of the parties, absolves

the others; and authorizes them, if they please, to pronounce the compact violated and void. Should it unhappily be necessary to appeal to these delicate truths, for a justification for dispensing with the consent of particular states to a dissolution of the federal pact, will not the complaining parties find it a difficult task to answer the *multiplied* and *important* infractions, with which they may be confronted? The time has been, when it was incumbent on us all to veil the ideas which this paragraph exhibits. The scene is now changed, and with it, the part which the same motives dictate.

The second question is not less delicate; and the flattering prospect of its being merely hypothetical, forbids an over-curious discussion of it. It is one of those cases which must be left to provide for itself. In general it may be observed, that although no political relation can subsist between the assenting and dissenting states, yet the moral relations will remain uncancelled. The claims of justice, both on one side and on the other, will be in force, and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to re-union, will, it is hoped, not urge in vain *moderation* on one side, and *prudence* on the other.

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BY MR. MADISON.

The same View continued and concluded.

A FIFTH class of provisions, in favour of the federal authority, consists of the following restrictions on the authority of the several states.

1. "No state shall enter into any treaty, alliance, "or confederation; grant letters of marque and re-"prisal; coin money; emit bills of credit; make "any thing but gold and silver a legal tender in "payment of debt; pass any bill of attainder, *ex* "*post facto* law, or law impairing the obligation of "contracts; or grant any title of nobility."

The prohibition against treaties, alliances, and confederations, makes a part of the existing articles of union; and for reasons which need no explanation, is copied into the new constitution. The prohibition of letters of marque, is another part of the old system, but is somewhat extended in the new. According to the former, letters of marque could be granted by the states, after a declaration of war; according to the latter, these licenses must be obtained, as well during the war, as previous to its declaration, from the government or the United States. This alteration is fully justified, by the advantage of uniformity in all points which relate to foreign powers; and of immediate responsibility to the nation in all those, for whose conduct the nation itself is to be responsible.

The right of coining money, which is here taken from the states, was left in their hands by the confederation, as a concurrent right with that of congress, under an exception in favour of the exclusive right of congress to regulate the alloy and value. In this instance, also, the new provision is an improvement on the old. Whilst the alloy and value depended on the general authority, a right of coinage in the particular states could have no other effects, than to multiply expensive mints, and diversify the forms and weights of the circulating pieces. The latter inconveniency defeats one purpose, for which the power was originally submitted to the federal head; and as far as the former might prevent an inconvenient remittance of gold and silver to the central mint for re-coinage, the end can be as well attained by local mints established under the general authority.

The extension of the prohibition to bills of credit, must give pleasure to every citizen, in proportion to his love of justice, and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man; on the necessary confidence in the public councils; on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the states, chargeable with this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it. In addition to these persuasive considerations, it may be observed, that

the same reasons which show the necessity of denying to the states the power of regulating coin, prove, with equal force, that they ought not to be at liberty to substitute a paper medium, in the place of coin. Had every state a right to regulate the value of its coin, there might be as many different currencies as states; and thus, the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus the citizens of other states be injured, and animosities be kindled among the states themselves. The subjects of foreign powers might suffer from the same cause, and hence the union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power in the states to emit paper money, than to coin gold or silver. The power to make any thing but gold and silver a tender in the payment of debts, is withdrawn from the states, on the same principle with that of striking of paper currency.

Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former, are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favour of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments, as the undoubted interests of their con-

stituents. The sober people of America, are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators; and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society. The prohibition with respect to titles of nobility, is copied from the articles of confederation, and needs no comment.

2. "No state shall, without the consent of the "congress, lay any imposts or duties on imports or "exports, except what may be absolutely necessary "for executing its inspection laws, and the neat "produce of all duties and imposts laid by any state "on imports or exports, shall be for the use of the "treasury of the United States; and all such laws "shall be subject to the revision and control of the "congress. No state shall, without the consent of "congress, lay any duty on tonnage, keep troops or "ships of war in time of peace; enter into any "agreement or compact with another state, or with "a foreign power, or engage in war, unless actually "invaded, or in such imminent danger as will not "admit of delay."

The restraint on the power of the states over im-

ports and exports, is enforced by all the arguments which prove the necessity of submitting the regulation of trade to the federal councils. It is needless, therefore, to remark further on this head, than that the manner in which the restraint is qualified, seems well calculated at once to secure to the states a reasonable discretion in providing for the conveniency of their imports and exports, and to the United States, a reasonable check against the abuse of this discretion. The remaining particulars of this clause, fall within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark.

The sixth and last class, consists of the several powers and provisions, by which efficacy is given to all the rest.

1. "Of these, the first is, the power to make all "laws which shall be necessary and proper for "carrying into execution the foregoing powers, and "all other powers vested by this constitution in "the government of the United States."

Few parts of the constitution have been assailed with more intemperance than this; yet on a fair investigation of it, as has been elsewhere shown, no part can appear more completely invulnerable. Without the *substance* of this power, the whole constitution would be a dead letter. Those who object to the article, therefore, can only mean that the *form* of the provision is improper. But have they considered whether a better form could have been substituted?

There are four other possible methods, which the convention might have taken on this subject. They might have copied the second article of the existing confederation, which would have prohibited the ex-

ercise of any power not *expressly* delegated; they might have attempted a positive enumeration of the powers comprehended under the general terms "necessary and proper;" they might have attempted a negative enumeration of them, by specifying the powers excepted from the general definition: They might have been altogether silent on the subject; leaving these necessary and proper powers, to construction and inference.

Had the convention taken the first method of adopting the second article of confederation, it is evident that the new congress would be continually exposed, as their predecessors have been, to the alternative of construing the term "*expressly*" with to much rigour, as to disarm the government of all real authority whatever, or with so much latitude as to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no important power, delegated by the articles of confederation, has been or can be executed by congress, without recurring more or less to the doctrine of *construction* or *implication*. As the powers delegated under the new system are more extensive, the government which is to administer it, would find itself still more distressed with the alternative of betraying the public interest by doing nothing; or of violating the constitution by exercising powers indispensably necessary and proper; but at the same time, not *expressly* granted.

Had the convention attempted a positive enumeration of the powers, necessary and proper for carrying their other powers into effect; the attempt would have involved a complete digest of laws on every subject to which the constitution relates; accommodated too not only to the existing state of things,

but to all the possible changes which futurity may produce: For in every new application of a general power, the *particular powers*, which are the means of attaining the *object* of the general power, must always necessarily vary with that object; and be often properly varied whilst the object remains the same.

Had they attempted to enumerate the particular powers or means, not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical; and would have been liable to this further objection; that every defect in the enumeration, would have been equivalent to a positive grant of authority. If, to avoid this consequence, they had attempted a partial enumeration of the exceptions, and described the residue by the general terms, *not necessary or proper;* it must have happened that the enumeration would comprehend a few of the excepted powers only; that these would be such as would be least likely to be assumed or tolerated, because the enumeration would of course select such as would be least necessary or proper, and that the unnecessary and improper powers included in the residuum, would be less forcibly excepted, than if no partial enumeration had been made.

Had the constitution been silent on this head, there can be no doubt that all the particular powers, requisite as means of executing the general powers, would have resulted to the government, by unavoidable implication. No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it, is

included. Had this last method therefore been pursued by the convention, every objection now urged against their plan, would remain in all its plausibility; and the real inconveniency would be incurred, of not removing a pretext which may be seized on critical occasions, for drawing into question the essential powers of the union.

If it be asked, what is to be the consequence, in case the congress shall misconstrue this part of the constitution, and exercise powers not warranted by its true meaning? I answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same, in short, as if the state legislatures should violate their respective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort, a remedy must be obtained from the people, who can, by the election of more faithful representatives, annual the acts of the usurpers. The truth is, that this ultimate redress may be more confided in against unconstitutional acts of the federal, than of the state legislatures, for this plain reason, that as every such act of the former, will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in affecting a change of federal representatives. There being no such intermediate body between the state legislatures and the people, interested in watching the conduct of the former, vio-

tutions of the state constitution are more likely to remain unnoticed and unredressed.

2. "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

The indiscreet zeal of the adversaries to the constitution, has betrayed them into an attack on this part of it also, without which it would have been evidently and radically defective. To be fully sensible of this, we need only suppose for a moment, that the supremacy of the state constitutions had been left complete, by a saving clause in their favour.

In the first place, as these constitutions invest the state legislatures with absolute sovereignty, in all cases not excepted by the existing articles of confederation, all the authorities contained in the proposed constitution, so far as they exceed those enumerated in the confederation, would have been annulled, and the new congress would have been reduced to the same impotent condition with their predecessors.

In the next place, as the constitutions of some of the states do not even expressly and fully recognize the existing powers of the confederacy, an express saving of the supremacy of the former, would in such states have brought into question every power contained in the proposed constitution.

In the third place, as the constitutions of the states differ much from each other, it might hap-

pen that a treaty or national law of great and equal importance to the states, would interfere with some and not with other constitutions, and would consequently be valid in some of the states, at the same time that it would have no effect in others.

In fine, the world would have seen for the first time, a system of government founded on an inversion of the fundamental principles of *all* government; it would have seen the authority of the whole society every where subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members.

3. "The senators and representatives, and the "members of the several state legislatures; and all "executive and judicial officers, both of the United "States and the several states, shall be bound by "oath or affirmation, to support this constitution."

It has been asked, why it was thought necessary, that the state magistracy should be bound to support the federal constitution, and unnecessary that a like oath should be imposed on the officers of the United States, in favour of the state constitutions?

Several reasons might be assigned for the distinctions. I content myself with one, which is obvious and conclusive. The members of the federal government, will have no agency in carrying the state constitutions into effect. The members and officers of the state governments, on the contrary, will have an essential agency in giving effect to the federal constitution. The election of the president and senate, will depend in all cases, on the legislatures of the several states. And the election of the house of representatives, will equally depend on the same authority in the first instance; and will,

probably, for ever be conducted by the officers, and according to the laws of the states.

4. Among the provisions for giving efficacy to the federal powers, might be added, those which belong to the executive and judiciary departments: But as these are reserved for particular examination in another place, I pass them over in this.

We have now reviewed in detail, all the articles composing the sum or quantity of power, delegated by the proposed constitution to the federal government; and are brought to this undeniable conclusion, that no part of the power is unnecessary, or improper, for accomplishing the necessary objects of the union. The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, whether or not a government commensurate to the exigencies of the union, shall be established; or in other words, whether the union itself shall be preserved.

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BY MR. MADISON.

A further Discussion of the supposed Danger from the Powers of the Union, to the state Governments.

HAVING shown, that no one of the powers transferred to the federal government is unnecessary or improper, the next question to be considered is,

whether the whole mass of them will be dangerous to the portion of authority left in the several states?

The adversaries to the plan of the convention, instead of considering in the first place, what degree of power was absolutely necessary for the purposes of the federal government, have exhausted themselves in a secondary inquiry into the possible consequences of the proposed degree of power to the governments of the particular states. But if the union, as has been shown, be essential to the security of the people of America against foreign danger; if it be essential to their security against contentions and wars among the different states; if it be essential to guard them againt those violent and oppressive factions, which embitter the blessings of liberty, and against those military establishments which must gradually poison its very fountain; if, in a word, the union be essential to the happiness of the people of America, is it not preposterous, to urge as an objection to a government, without which the objects of the union cannot be attained, that such a government may derogate from the importance of the governments of the individual states? Was then the American revolution effected, was the American confederacy formed, was the precious blood of thousands spilt, and the hard earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety; but that the governments of the individual states, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the old world, that the people were made

for kings, not kings for the people. Is the same doctrine to be revived in another shape, in the new, that the solid happiness of the people is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever, has any other value, than as it may be fitted for the attainment of this subject. Were the plan of the convention adverse to the public happiness, my voice would be, reject the plan. Were the union itself inconsistent with the public happiness, it would be, abolish the union. In like manner, as far as the sovereignty of the states cannot be reconciled to the happiness of the people, the voice of every good citizen must be, let the former be sacrificed to the latter. How far the sacrifice is necessary, has been shown. How far the unsacrificed residue will be endangered, is the question before us.

Several important considerations have been touched in the course of these papers, which discountenance the supposition, that the operation of the federal government will by degrees prove fatal to the state governments. The more I revolve the subject, the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first scale.

We have seen in all the examples of ancient and modern confederacies, the strongest tendency continually betraying itself in the members, to despoil the general government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments. Although in most

of these examples, the system has been so dissimilar from that under consideration, as greatly to weaken any inference concerning the latter, from the fate of the former; yet, as the states will retain, under the proposed constitution, a very extensive portion of active sovereignty, the inference ought not to be wholly disregarded. In the Achæan league, it is probable that the federal head had a degree and species of power, which gave it a considerable likeness to the government framed by the convention. The Lycian confederacy, as far as its principles and form are transmitted, must have borne a still greater analogy to it. Yet history does not inform us, that either of them ever degenerated, or tended to degenerate, into one consolidated government. On the contrary, we know that the ruin of one of them proceeded from the incapacity of the federal authority to prevent the dissentions, and finally the disunion of the subordinate authorities. These cases are the more worthy of our attention, as the external causes by which the component parts were pressed together, were much more numerous and powerful than in our case; and consequently less powerful ligaments within, would be sufficient to bind the members to the head, and to each other.

In the feudal system, we have seen a similar propensity exemplified. Notwithstanding the want of proper sympathy in every instance between the local sovereigns and the people, and the sympathy in some instances between the general sovereign and the latter; it usually happened, that the local sovereigns prevailed in the rivalship for encroachments. Had no external dangers enforced internal harmony and subordination; and particularly, had the local sovereigns possessed the affections of the

people, the great kingdoms in Europe, would at this time consist of as many independent princes, as there were formerly feudatory barons.

The state governments will have the advantage of the federal government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other.

The state governments may be regarded as constituent and essential parts of the federal government; whilst the latter is no wise essential to the operation or organization of the former. Without the intervention of the state legislatures, the president of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The senate will be elected absolutely and exclusively by the state legislatures. Even the house of representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the state legislatures. Thus each of the principal branches of the federal government will owe its existence more or less to the favour of the state governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious, than too overbearing towards them. On the other side, the component parts of the state governments, will in no instance be indebted for their appointment to

the direct agency of the federal government, and very little, if at all, to the local members.

The number of individuals employed under the constitution of the United States, will be much smaller than the number employed under the particular states. There will consequently be less of personal influence on the side of the former, than of the latter. The members of the legislative, executive, and judiciary departments, of thirteen and more states; the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed, and having particular acquaintance with every class and circle of people, must exceed beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. Compare the members of the three great departments, of the Thirteen States, excluding from the judiciary department the justices of peace, with the members of the corresponding departments of the single government of the union; compare the militia officers of three millions of people, with the military and marine officers of any establishment which is within the compass of probability, or, I may add, of possibility; and in this view alone, we may pronounce the advantage of the states to be decisive. If the federal government is to have collectors of revenue, the state governments will have theirs also. And as those of the former will be principally on the sea coast, and not very numerous; whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true that the confederacy is to pos-

sess, and may exercise, the power of collecting internal as well as external taxes throughout the states: But it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the states to supply their quotas by previous collections of their own; and that the eventual collection under the immediate authority of the union, will generally be made by the officers, and according to the rules appointed by the several states. Indeed, it is extremely probable, that in other instances, particularly in the organization of the judicial power, the officers of the states will be clothed with the correspondent authority of the union. Should it happen, however, that the separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of state officers in the opposite scale. Within every district, to which a federal collector would be allotted, there would not be less than thirty or forty, or even more officers, of different descriptions, and many of them persons of character and weight, whose influence would lie on the side of the state.

The powers delegated by the proposed constitution to the federal government, are few and defined. Those which are to remain in the state governments, are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negociation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties,

and properties of the people; and the internal order, improvement, and prosperity of the state.

The operations of the federal government will be most extensive and important in times of war and danger; those of the state governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the state governments will here enjoy another advantage over the federal government. The more adequate indeed the federal powers may be rendered to the national defence, the less frequent will be those scenes of danger which might favour their ascendancy over the governments of the particular states.

If the new constitution be examined with accuracy and candour, it will be found that the change which it proposes, consists much less in the addition of NEW POWERS to the union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing congress by the articles of confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating to taxation, may be regarded as the most important: and yet the present congress have as complete authority to REQUIRE of the states, indefinite supplies of money for the common defence and general welfare, as the future congress will have to require them of individual citizens; and the latter will be no more bound than the states themselves have been, to pay the quotas respectively taxed

on them. Had the states complied punctually with the articles of confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event would have ensued, would be to say at once, that the existence of the state governments is incompatible with any system whatever, that accomplishes the essential purposes of the union.

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BY MR. MADISON.

The subject of the last Paper resumed; with an examination of the comparative means of influence of the Federal and State Governments.

RESUMING the subject of the last paper, I proceed to inquire, whether the federal government, or the state governments, will have the advantage with regard to the predilection and support of the people.

Notwithstanding the different modes in which they are appointed, we must consider both of them as substantially dependent on the great body of citi-

zens of the United States. I assume this position here as it respects the first, reserving the proofs for another place. The federal and state governments are in fact but different agents and trustees of the people, instituted with different powers, and designed for different purposes. The adversaries of the constitution, seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior, in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told, that the ultimate authority, wherever the derivative may be found, resides in the people alone; and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires, that the event in every case, should be supposed to depend on the sentiments and sanction of their common constituents.

Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt, that the first and most natural attachment of the people, will be to the governments of their respective states. To the administration of these, a greater number of individuals will expect to rise. From the gift of these, a greater number of offices and emoluments will flow. By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these, the people will be more familiarly and minutely conversant; with the members

of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments; on the side of these, therefore, the popular bias may well be expected most strongly to incline.

Experience speaks the same language in this case. The federal administration, though hitherto very defective, in comparison with what may be hoped under a better system, had, during the war, and particularly whilst the independent fund of paper emission was in credit, an activity and importance as great as it can well have, in any future circumstances whatever. It was engaged too in a course of measures, which had for their object, the protection of every thing that was dear, and the acquisition of every thing that could be desirable to the people at large. It was, nevertheless, invariably found, after the transient enthusiasm for the early congresses was over, that the attention and attachment of the people were turned anew to their own particular governments; that the federal council was at no time the idol of popular favour; and that opposition to proposed enlargements of its powers and importance, was the side usually taken by the men, who wished to build their political consequence on the prepossessions of their fellow citizens.

If, therefore, as has been elsewhere remarked, the people should in future become more partial to the federal than to the state governments, the change can only result from such manifest and irresistible proofs of a better administration, as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence, where

they may discover it to be most due: but, even then, the state governments could have little to apprehend, because it is only within a certain sphere, that the federal power can, in the nature of things, be advantageously administered.

The remaining points on which I propose to compare the federal and state governments, are the disposition, and the faculty they may respectively possess, to resist and frustrate the measures of each other.

It has been already proved, that the members of the federal will be more dependent on the members of the state governments, than the latter will be on the former. It has appeared, also, that the prepossessions of the people, on whom both will depend, will be more on the side of the state governments, than of the federal government. So far as the disposition of each, towards the other, may be influenced by these causes, the state governments must clearly have the advantage. But in a distinct and very important point of view, the advantage will lie on the same side. The prepossessions which the members themselves will carry into the federal government, will generally be favourable to the states; whilst it will rarely happen, that the members of the state governments will carry into the public councils a bias in favour of the general government. A local spirit will infallibly prevail much more in the members of the congress, than a national spirit will prevail in the legislatures of the particular states. Every one knows, that a great proportion of the errors committed by the state legislatures, proceeds from a disposition of the members to sacrifice the comprehensive and permanent interests of the state, to the particular and separate views of

the counties or districts in which they reside. And if they do not sufficiently enlarge their policy, to embrace the collective welfare of their particular state, how can it be imagined, that they will make the aggregate prosperity of the union, and the dignity and respectability of its government, the objects of their affections and consultations? For the same reason, that the members of the state legislatures will be unlikely to attach themselves sufficiently to national objects, the members of the federal legislature will be likely to attach themselves too much to local objects. The states will be to the latter, what counties and towns are to the former. Measures will too often be decided according to their probable effect, not on the national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments and people of the individual states. What is the spirit that has in general characterized the proceedings of congress? A perusal of their journals, as well as the candid acknowledgments of such as have had a seat in that assembly, will inform us, that the members have but too frequently displayed the character, rather of partizans of their respective states, than of impartial guardians of a common interest; that where on one occasion, improper sacrifices have been made of local considerations to the aggrandizement of the federal government; the great interests of the nation have suffered on an hundred, from an undue attention to the local prejudices, interests, and views of the particular states. I mean not by these reflections to insinuate, that the new federal government will not embrace a more enlarged plan of policy, than the existing government may have pursued; much less, that its views will be as com-

fined as those of the state legislatures; but only that it will partake sufficiently of the spirit of both, to be disinclined to invade the rights of the individual states, or the prerogatives of their governments. The motives on the part of the state governments, to augment their prerogatives by defalcations from the federal government, will be over-ruled by no reciprocal predispositions in the members.

Were it admitted, however, that the federal government may feel an equal disposition with the state governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments. If an act of a particular state, though unfriendly to the national government, be generally popular in that state, and should not too grossly violate the oaths of the state officers, it is executed immediately, and of course, by means on the spot, and depending on the state alone. The opposition of the federal government, or the interposition of federal officers, would but inflame the zeal of all parties on the side of the state; and the evil could not be prevented or repaired, if at all, without the employment of means which must always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable measure of the federal government be unpopular in particular states, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful, and at hand. The disquietude of the people; their repugnance, and perhaps refusal, to co-operate with the officers of the union; the frowns of the executive magistracy of the state; the embarrassments created by legislative devices, which would often

be added on such occasions, would oppose, in any state, difficulties not to be despised; would form, in a large state, very serious impediments; and where the sentiments of several adjoining states happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.

But ambitious encroachments of the federal government, on the authority of the state governments, would not excite the opposition of a single state, or of a few states only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combination, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case, as was made in the other. But what degree of madness could ever drive the federal government to such an extremity? In the contest with Great-Britain, one part of the empire was employed against the other. The more numerous part invaded the rights of the less numerous part. The attempt was unjust and unwise; but it was not in speculation absolutely chimerical. But what would be the contest, in the case we are supposing? Who would be the parties? A few representatives of the people would be opposed to the people themselves; or rather one set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter.

The only refuge left for those who prophecy the downfal of the state governments, is the visionary supposition, that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers, must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the states should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the states should silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the state governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a

militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced, could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the late successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone, they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will, and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned, in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be

in actual possession, than the debased subjects of arbitrary power would be, to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition, that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures, which must precede and produce it.

The argument under the present head may be put into a very concise form, which appears altogether conclusive. Either the mode in which the federal government is to be constructed, will render it sufficiently dependent on the people, or it will not. On the first supposition, it will be restrained by that dependence from forming schemes obnoxious to their constituents. On the other supposition, it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the state governments; which will be supported by the people.

On summing up the considerations stated in this and the last paper, they seem to amount to the most convincing evidence, that the powers proposed to be lodged in the federal government, are as little formidable to those reserved to the individual states, as they are indispensably necessary to accomplish the purposes of the union; and that all those alarms which have been sounded, of a meditated and consequential annihilation of the state governments, must, on the most favourable interpretation, be ascribed to the chimerical fears of the authors of them.

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